EXT ANNUAL MEETING WILL BE HELD AT BOSTON THE WEEK OF AUGUST 24

AMERICAN BAR ASSOCIATION JOVRNAL

VOL. XXII MAY, 1936 NO. 5

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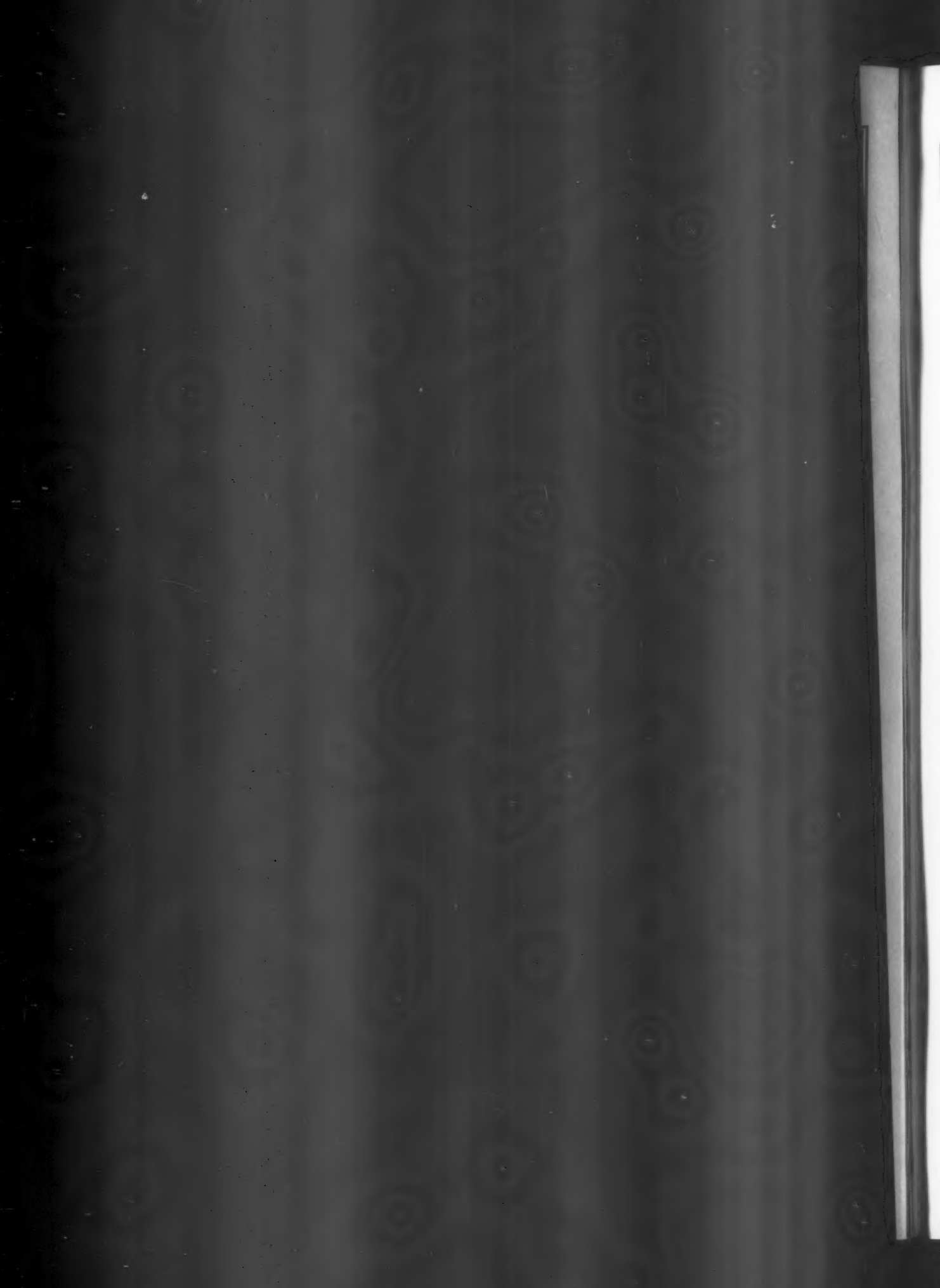

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AMERICAN BAR ASSOCIATION
JOVRNAL

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• Current Events •

Annual Review of Legal Education Ready for Distribution—Follows in Footsteps of Previous Reviews Published by Carnegie Foundation

THE Annual Review of Legal Education for 1935 has been completed and is expected to be off the press the first week in May. It is the most ambitious publication which has yet been attempted by the Section of Legal Education and follows in the footsteps of previous Annual Reviews which have been published by the Carnegie Foundation. Its general makeup will be similar to them in respect to the list of law schools and bar admission requirements of the various states and its survey of recent changes in both those fields.

In addition, it will contain an article by Dean Roscoe Pound of the Harvard Law School on "Present Tendencies in Legal Education" and an article by Will Shafroth, Adviser to the Council of the Section of Legal Education and Admissions to the Bar on "The Next Step in Improvement of Bar Admission Standards."

Dean Pound starts out with the thesis that "Significant tendencies in American legal education are in the direction of experiment" which has resulted from a variety of causes, one of which is the period of transition in the law which has been particularly evident since the world war. Tendencies in law school faculties have been to include a certain proportion of non-lawyers or at least toward the use of materials of the other social sciences in law school teaching. In a few leading law schools selective methods have been used in controlling admission, but Dean Pound points out that a great deal more experiment is still required to determine the best means of selection. Changes in the law school curriculum, he states, have been influenced by a desire to cover more ground and to emphasize the "functional approach" to the law.

In reference to methods of instruction, his comment concerning the case system will be of interest both to law teachers and to all lawyers who have had a law school training. On this subject he says:

"Much experimentation is going on as to methods of instruction. The critical analytical examination of the leading cases and selected problem cases in each subject which had developed out of Langdell's pioneer case books, while undoubtedly a permanent element in law teaching in the common-law world (indeed it is extending to civil-law teaching), is no longer wholly satisfactory as an exclusive method for the whole course. For one thing, it takes so much time, if well done, as not only to limit the amount of ground which can be covered in any one subject, but to limit also the scope of the law course as a whole. As the first task of the law teaching in the common-law world must be to give the student mastery of the common-law lawyer's technique, the thoroughness with which this task is achieved will compensate for much omission of detailed study of particular subjects. But when the student in his first and second years has mastered the technique of finding grounds of decision of concrete cases and solution of concrete problems in the authoritative legal materials, it is likely to irk him if he must go on acquiring knowledge of particular subjects in this halting, if thorough, way. Moreover, a growing number of subjects call for more or less use of materials not in the law books and not to be treated by the technique applicable to the law reports. In particular, the growth of administrative tribunals and the increasing importance of their work, call for a different type of material for study and to some extent a different technique of using it.

"One way of meeting this condition is to take over seminars and seminar methods from graduate to undergraduate instruction. This has been going forward steadily in recent years. Another is to develop individual reading and the writing of theses and papers, designed to do in another way much of what is done by their work upon notes and recent cases for the students who are chosen for the legal periodicals. Another is to turn undergraduates, in a suitable stage of preparation, to research or to use them as assistants to teachers engaged in research or in connection with the American Law Institute. Such things are tending to turn law teaching into new methodological channels. But for the most part the new methods have still to be organized and systematized in a settled plan of instruction."

He concludes by pointing out that

graduate study as training in preparation for law teaching or by the younger teachers as a step toward promotion has become a well established practice and that this is a development of recent years which promises to have a wholesome effect on law teaching in the future.

Mr. Shafroth in his article stresses the fact that admission requirements must be determined principally by what is in the best interest of the public since the basic objective of the legal profession will always be service to the public. He defines the necessary factors to qualify a candidate for a lawyer's license as follows:

"First the lawyers should have a broad general education; second, a technical education on legal principles and procedure including an ability to reason out legal problems; and, third, high moral character. These are not, however, tightly shut apart from each other in separate compartments. The technical education which today can be acquired only in a good law school must have the cultural foundation on which to build, and it is generally accepted that that cultural foundation obtained in an American college or university is also intimately connected with the element of moral stamina."

He then discusses these various factors and points out the progress which has been made in the adoption of the standards recommended by the American Bar Association from the time when in 1921 Kansas was the only State having a two-year college requirement up to the present when thirty States have adopted it, and concludes as follows:

"It seems apparent that the movement for adequate admission requirements has acquired sufficient momentum to continue its progress if the efforts of the bar are not relaxed. A tendency which is just making its appearance will hasten action in the states still content with low requirements of general education. In the last several years it has been apparent that students from states having higher requirements are migrating to those jurisdictions where they can attain admission more easily and are establishing themselves in practice there. Some of these students consider this only a temporary move and hope to return to the states from which they came after they have practiced a sufficient length of time to acquire the right to admission on motion. As it becomes realized that low requirements are attracting low-grade candidates, action will follow. Within the past year, for example, half a dozen candidates have gone from New York City to a southern state where there were no requirements of general education. Most of these had less than the two years of college education required in New York and had studied law by correspondence. As soon as the lawyers in any state know that it is becoming the dumping ground for unprepared candidates, then the requirements in that state will be rediscussed with a view to revision.

"The main problem in this field which the American lawyer now has to face is the problem of the substandard law school. To insist on reasonable standards of legal education means the elimination of many commercial schools and the improvement of many others in the unapproved group. To accomplish this, a struggle is necessary with entrenched interests of long standing and a victory must be gained over a viewpoint which maintains that established educational institutions have a vested right to carry on in their own way. Inferior institutions offering a synthetic form of legal education will continue to thrive until we have wide-spread requirements, not only of two years of liberal college education but also of graduation from an approved law school. This cannot be brought about without a determined fight by the profession."

Copies of the Review may be obtained on request to the headquarters of the American Bar Association, 1140 North Dearborn St., Chicago, Illinois.

Missouri Supreme Court Advisory Committee Promulgates Rules Fixing Charges for Law Directory Subscriptions and Listing in Selected Commercial Law Lists in That State

MAXIMUM subscription prices to be paid for law directories, and maximum charges for listing in selected commercial law lists are some of the outstanding features of the rules adopted by the Advisory Committee of the Supreme Court of Missouri on March 7. The Advisory Committee, of which Boyle G. Clark is chairman, enacted the regulations pursuant to the rule of the Supreme Court itself which forbade Missouri lawyers to permit their names to be listed in law directories or lists which were not "reputable." After defining, to some extent, the requisites of a "reputable" list or directory, the Supreme Court, by rule, directed the Advisory Committee to determine which publications met the requirements.

The Advisory Committee's rules forbid publishers of directories and lists from charging more for subscriptions and listing than the cost of preparing, printing and distributing, plus a reasonable profit. The costs are to be uniform, but may be graded on the basis of population, if the charge in each bracket of population is uniform. Rule 6 sets the maximum subscription prices as follows:

"(a) Law Directories. The maximum subscription prices for law directories of two volumes shall be $25.60, and the publisher thereof may charge a lawyer or firm of lawyers for card space in the biographical section at the rate of not to exceed $15.00 per one-sixth of a page of approximately forty-six square inches.

"(b) Law Lists. Publishers of selected commercial law lists shall charge not to exceed the following schedule of prices for the listing of the Bar of Missouri, towit:

"Cities of 100,000 or more population, $50.00 per annum;

"Cities of 50,000 to 100,000 population, $35.00 per annum;

"Cities of 20,000 to 50,000 population, $25.00 per annum;

"Cities of 10,000 to 20,000 population, $15.00 per annum;

"Cities of 2,000 to 10,000 population, $10.00 per annum;

"Cities of less than 2,000 population, $5.00 per annum;

"The list publisher may, at its option, include a card of one-eighth of a page in the biographical section with the subscription. If the subscriber member desires more than one-eighth of a page in the biographical section, it shall be paid for at the rate of $5.00 for each additional eighth of a page or the publisher may charge the subscriber at the rate of $25.00 per page for a card inserted in the biographical section."

Law directories are required to publish the names of all lawyers in the geographical section covered by it in uniform type, although cards may be published in a biographical section. Law lists must publish names of all those who apply unless they decline to do so for a good reason. If an application is declined, this is subject to review by the Advisory Committee. The list can not rate the listees, nor may the listees be bonded. All lists and directories may be circulated only to members of the bar.

To secure approval as a "reputable" list or directory, an application must be filed by the publisher with the Gen-

eral Chairman of the Bar Committees (likewise Chairman of the Advisory Committee), and the application must contain full information as to subscribers, prices charged, circulation, and such other information as may be requested from time to time. Approval may be revoked at any time on reasonable notice to the publisher.

Committees on Proper Trial Publicity Hold Joint Meeting

THE three Committees on Cooperation Between Press, Radio and Bar against publicity interfering with fair trial of judicial and quasi-judicial proceedings met at the Times' Annex on Friday, April 26. All members of all committees were present with one exception. The committees represent respectively the American Bar Association, the American Newspaper Publishers Association and the American Society of Newspaper Editors.

The meeting was preliminary. There was general discussion by all present and apparently common ground on which all may agree, but no attempt to crystallize the discussion. At the conclusion the Chairman of each of the Committees, namely, Mr. Baker, Mr. Bellamy and Mr. Perry, were constituted an Executive Committee to formulate a program and plan and a statement of principles which will be submitted to the members for their consideration.

Indiana and Oregon Adopt Two-Year College Requirement—Court Rules Also Provide for Three Years of Legal Training and Character Investigation of Foreign Attorneys

THE two states of Indiana and Oregon have recently been added to the rapidly growing list of jurisdictions requiring two years of college education or its equivalent and a minimum of three years of law study before admission to the bar. In both cases the action was taken by the respective state Supreme Courts, and the new rules require that in Indiana law school study shall be pursued in a school meeting standards similar to those of the American Bar Association and in Oregon, in a school approved by its Supreme Court.

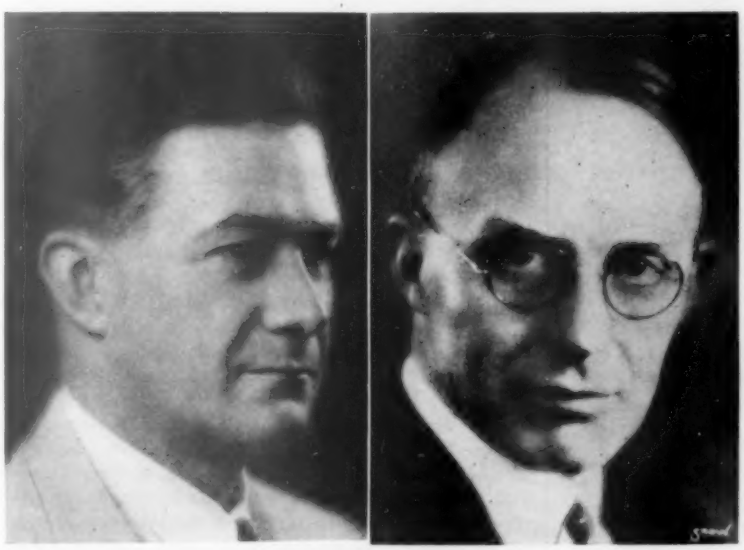
The promulgation of new rules in Indiana is particularly noteworthy by reason of the fact that for many years any advance in that state in standards of admission to the bar was prohibited by the provision of the Constitution of 1851, giving to every voter twenty-one years of age and of good moral character the right of admission to the bar. As a result, until 1931 the requirements for admission to the various courts of first instance in the state differed in the respective localities and in many cases the bar examination was only a formality. Indiana was on the lowest rung of the ladder and only by the most energetic and continuous work of the state bar association have its admission standards been brought up to the high level where they now are.

Through bar association efforts a bill was passed by the Legislature in 1931, giving the state Supreme Court exclusive jurisdiction over the subject of admission to the bar. After the bill was passed the Court promulgated rules setting up a State Board of Bar Examiners and required every original applicant to pass its examinations. The somewhat ingenious theory was put forward in the discussion of this rule that it did not violate the constitutional provision because it might well be held that a man who attempted to practice law in Indiana without sufficient knowledge to enable him to pass a bar examination was lacking in the necessary requirement of good moral character. In any event, it became unnecessary to test out this theory in the courts because the constitutional provision was repealed and the way for higher requirements was thus cleared.

Though the amendment striking the clause out of the Constitution was first declared to have been defeated, since it received less than a majority of all the votes cast at the election at which it was voted on, an interesting decision, *In Re Todd*, (193 N. E. 865), subsequently held that such a majority was unnecessary and that the amendment had been carried since more votes had been cast for it than against it. This decision was followed very shortly by renewed action on the part of the Indiana state bar association. A petition to raise the standards of admission was filed with the Court and was subsequently followed by another petition asking the Court to assert its inherent powers over the profession in the matter of admissions, discipline and bar organization. The strong arguments and the able briefs accompanying these petitions had their effect and the new rules for admission to the bar promulgated by the Court on March 28 are the result.

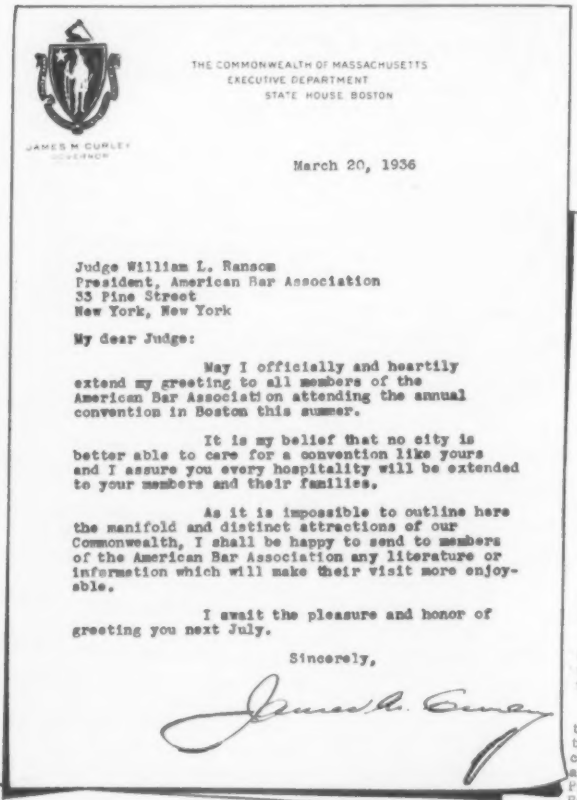
The Indiana rules divide the applicants into two classes: those qualifying by law school study and those qualifying by virtue of apprenticeship training in a law office. Candidates studying in a law school are required before taking the bar examinations to have graduated from a law school which meets standards similar to those recommended by the American Bar Association. Such law schools must require as a condition of admission at least two years of study in a college; must have a course of three years duration, if full time, or a longer course equivalent in the number of working hours, if part

(*Continued on page 298*)



From our Gallery of Association Chairmen: Left, Justin Miller, Chairman of Section on Criminal Law; right, James Grafton Rogers, Chairman of Section on Legal Education and Admissions to the Bar.

Invitations New England



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE BOSTON

JAMES M. CURLEY
GOVERNOR

March 20, 1936

Judge William L. Ransom
President, American Bar Association
33 Pine Street
New York, New York

My dear Judge:

May I officially and heartily extend my greeting to all members of the American Bar Association attending the annual convention in Boston this summer.

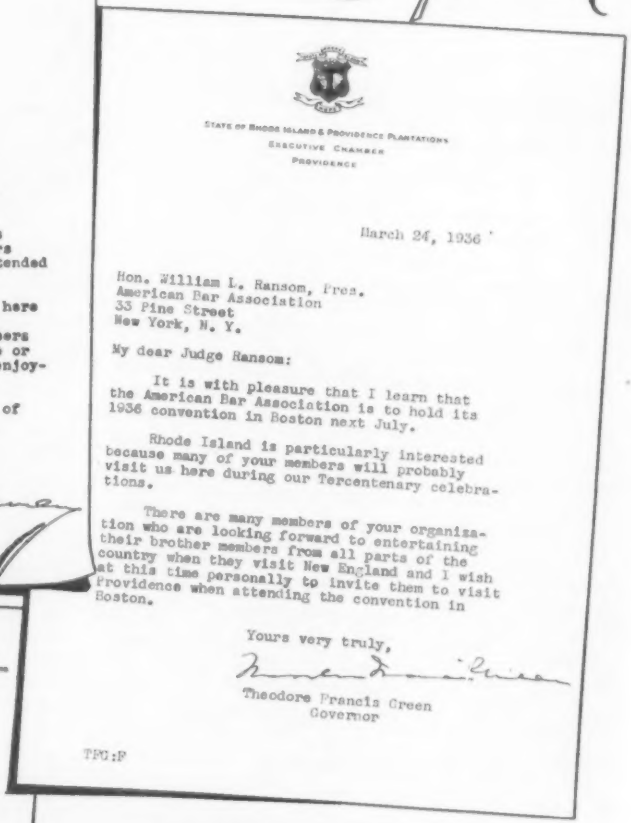
It is my belief that no city is better able to care for a convention like yours and I assure you every hospitality will be extended to your members and their families.

As it is impossible to outline here the manifold and distinct attractions of our Commonwealth, I shall be happy to send to members of the American Bar Association any literature or information which will make their visit more enjoyable.

I await the pleasure and honor of greeting you next July.

Sincerely,

James M. Curley



STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
EXECUTIVE CHAMBER
PROVIDENCE

March 24, 1936

Hon. William L. Ransom, Pres.
American Bar Association
33 Pine Street
New York, N. Y.

My dear Judge Ransom:

It is with pleasure that I learn that the American Bar Association is to hold its 1936 convention in Boston next July.

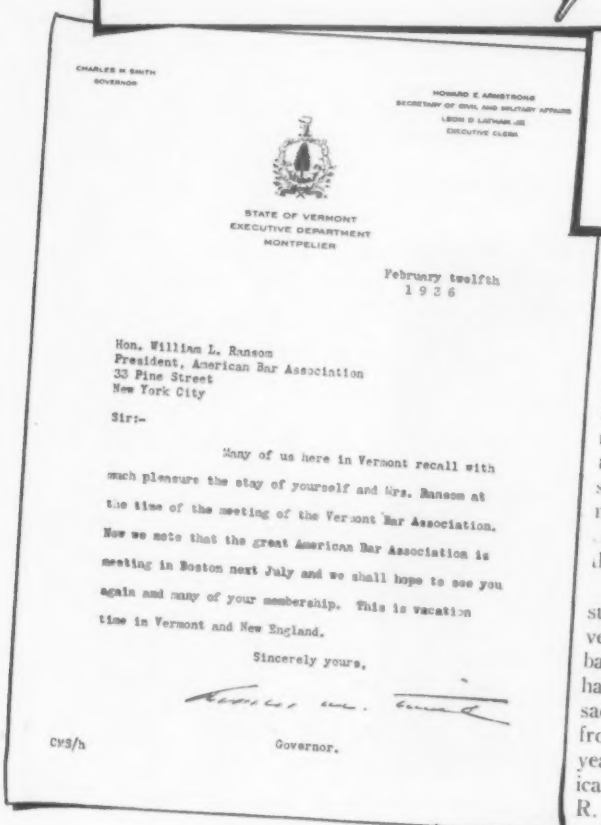
Rhode Island is particularly interested because many of your members will probably visit us here during our Tercentenary celebrations.

There are many members of your organization who are looking forward to entertaining their brother members from all parts of the country when they visit New England and I wish at this time personally to invite them to visit Providence when attending the convention in Boston.

Yours very truly,

Theodore Francis Green
Governor

TFG:F



CHARLES M SMITH
GOVERNOR

HOWARD E ARMSTRONG
SECRETARY OF CIVIL AND MILITARY AFFAIRS
LEON D LATHAM JR
EXECUTIVE CLERK

STATE OF VERMONT
EXECUTIVE DEPARTMENT
MONTPELIER

February twelfth
1936

Hon. William L. Ransom
President, American Bar Association
33 Pine Street
New York City

Sir:-

Many of us here in Vermont recall with much pleasure the stay of yourself and Mrs. Ransom at the time of the meeting of the Vermont Bar Association. Now we note that the great American Bar Association is meeting in Boston next July and we shall hope to see you again and many of your membership. This is vacation time in Vermont and New England.

Sincerely yours,

Governor.

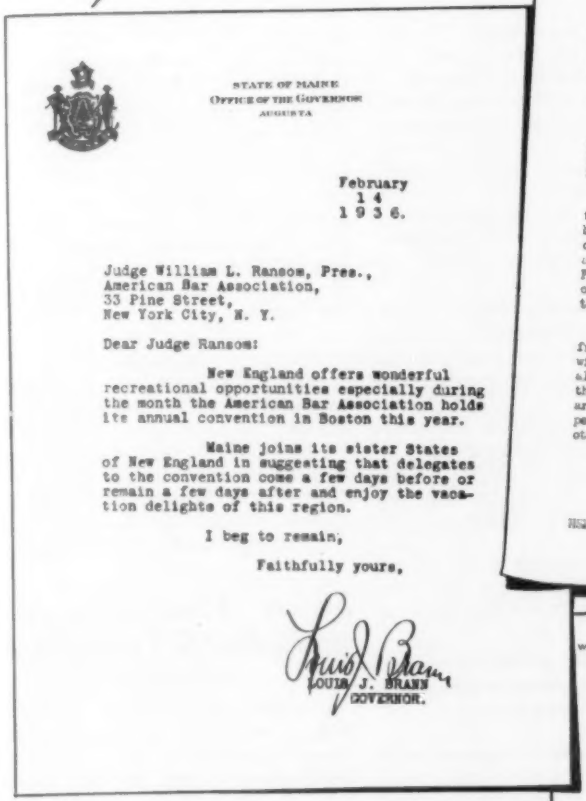
CWS/h

COME TO NEW ENGLAND!

FOR the first time in the history of the American Bar Association, the Governors of six States have joined in inviting American lawyers most hospitably to the region of our annual convention. The six Governors of New England States have written most cordial letters of invitation. I am appreciative of this hospitable gesture, and I urge each of you to consider whether you will not come to this year's annual meeting of the Association, which will open in Boston on the morning of August 24th and continue during that week.

This will be no ordinary or routine convention, such as you may feel free to stay away from at convenience. For our meeting this year, we are going back to the great shrines of American law—to scenes hallowed with the memories of mighty efforts and great sacrifices made for liberty under law and for freedom from arbitrary power in government. In this pivotal year, it may be appropriate that the lawyers of America are meeting in Boston, in the setting which George R. Farnum is describing so eloquently in his series of articles in the AMERICAN BAR ASSOCIATION JOURNAL.

from Governors



STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA

February
14
1936.

Judge William L. Ransom, Pres.,
American Bar Association,
33 Pine Street,
New York City, N. Y.

Dear Judge Ransom:

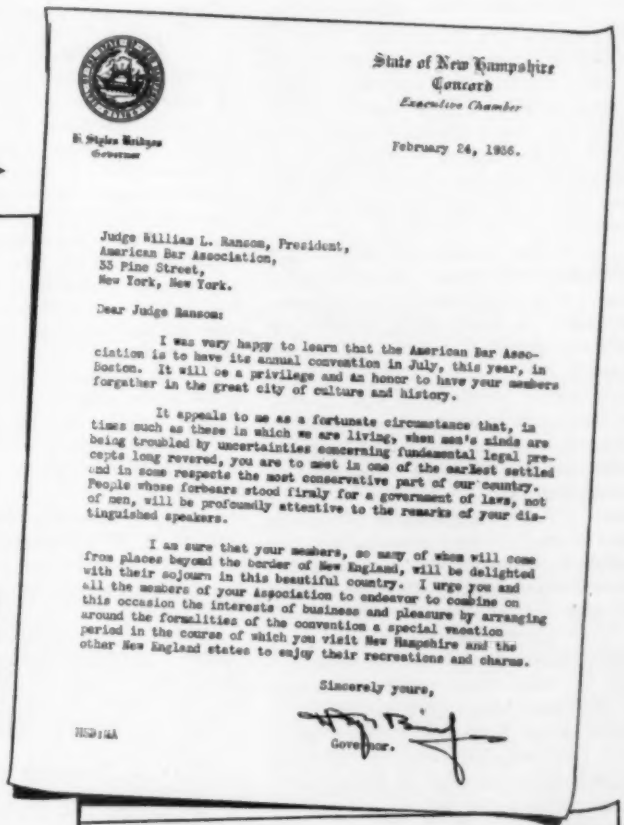
New England offers wonderful recreational opportunities especially during the month the American Bar Association holds its annual convention in Boston this year.

Maine joins its sister States of New England in suggesting that delegates to the convention come a few days before or remain a few days after and enjoy the vacation delights of this region.

I beg to remain,

Faithfully yours,

LOUIS J. BRANN
GOVERNOR.



State of New Hampshire
Concord
Executive Chamber

H. Styles Bridges
Governor

February 24, 1936.

Judge William L. Ransom, President,
American Bar Association,
33 Pine Street,
New York, New York.

Dear Judge Ransom:

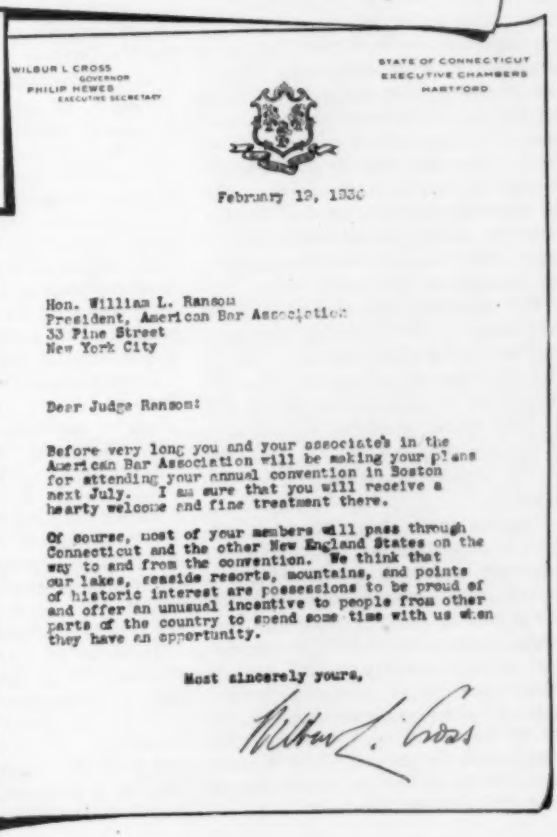
I was very happy to learn that the American Bar Association is to have its annual convention in July, this year, in Boston. It will be a privilege and an honor to have your members forgather in the great city of culture and history.

It appeals to me as a fortunate circumstance that, in times such as these in which we are living, when men's minds are being troubled by uncertainties concerning fundamental legal precepts long revered, you are to meet in one of the earliest settled and in some respects the most conservative part of our country. People whose forbears stood firmly for a government of laws, not of men, will be profoundly attentive to the remarks of your distinguished speakers.

I am sure that your members, so many of whom will come from places beyond the border of New England, will be delighted with their sojourn in this beautiful country. I urge you and all the members of your Association to endeavor to combine on this occasion the interests of business and pleasure by arranging around the formalities of the convention a special vacation period in the course of which you visit New Hampshire and the other New England states to enjoy their recreations and charms.

Sincerely yours,

Governor.



WILBUR L CROSS
GOVERNOR
PHILIP HEWES
EXECUTIVE SECRETARY

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD

February 12, 1936

Hon. William L. Ransom
President, American Bar Association
33 Pine Street
New York City

Dear Judge Ransom:

Before very long you and your associates in the American Bar Association will be making your plans for attending your annual convention in Boston next July. I am sure that you will receive a hearty welcome and fine treatment there.

Of course, most of your members will pass through Connecticut and the other New England States on the way to and from the convention. We think that our lakes, seaside resorts, mountains, and points of historic interest are possessions to be proud of and offer an unusual incentive to people from other parts of the country to spend some time with us when they have an opportunity.

Most sincerely yours,

Amid historic surroundings in New England, important decisions will be made which will affect the future of our profession and of our country. I do not refer alone to the action to be taken on the pending plan, so clearly and impressively explained by Henry Dart, Jr., yesterday, for a more representative organization of the legal profession in the United States, although that would be sufficient to make this year's convention historic. There are many other matters of importance to the profession, which are certain to come to the floor of a genuinely deliberative gathering of lawyers and there be discussed and voted upon.

This is one year when every American lawyer will do well to put aside his ordinary plans, in order to be in Boston on August 24th. You will find that New England offers excellent vacation opportunities, for the whole family, and that you will always be glad that you attended the Boston meeting in 1936. In any event, the opportunity is brought to your attention.

From address of President William L. Ransom of the American Bar Association at the Annual Meeting of the Louisiana State Bar Association, at Monroe, Louisiana, April 25, 1936.

(*Continued from page* 295)

time; must have an adequate library; a sufficient number of teachers giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body, and must not be operated as commercial enterprises. The law schools in the state are given until September 1st, 1937 to conform to these standards.

As to office students, the rules require that they shall pursue, for a period of four years, in the office of an attorney, a course of study which includes the subjects usually prescribed by an approved law school. These applicants must satisfy the Board of the adequacy of their general education. A combination of study in law school and law office, satisfactory to the Board of Law Examiners, is also permitted. In no event will any applicant be allowed to take more than four examinations and specified periods of time must elapse between examinations after the second failure.

The Oregon rules promulgated April 7th, go a step further and refuse to permit any office study except in the case of candidates who register as office students before August 1, 1936, in which case four years are required. All other candidates are required to present a diploma from a law school approved by the Supreme Court of that state or a certificate showing satisfactory completion of the regular course of study, of not less than three years' duration. Two years of college education are required but the equivalent may be shown by the passage of an examination given under the supervision of the Board of Bar Examiners, which examination must be taken within a year after the applicant has commenced law study.

An interesting feature of the rules in both states is the increase of the admission fees for foreign attorneys. In Indiana the fees were increased from $15 to $40 and in Oregon, from $50 to $75. In both states character investigation of foreign attorneys will be conducted by The National Conference of Bar Examiners.

Progress in the advancement of admission requirements is becoming increasingly rapid. With the addition of the two states just mentioned there are now a total of thirty jurisdictions, containing approximately 70% of the lawyers of this country, which require either presently or prospectively two years of college education or its equivalent of substantially all candidates for admission to the bar and which demand, in all but two instances, a minimum of three years of legal training.

Program of American Law Institute Meeting

THE Fourteenth Annual Meeting of the American Law Institute will be held at the Mayflower Hotel, Washington, D. C. from May 6-9. The Council of the Institute will submit to this meeting a Proposed Final Draft of Restitution and Unjust Enrichment (Quasi-Contracts and Constructive Trusts); also a Proposed Final Draft of the first two volumes of the Restatement of the Law of Property, with a view to having them adopted as Official Restatements. The Council will also submit, for criticism and suggestion Tentative Drafts of the Restatement of the Law of Torts (Parts Relating to Misrepresentation and Nondisclosure, and Defamation).

Following is the program for the meeting:

Wednesday, May 6

10:00 A. M. Registration of members and guests in the Pan-American Room, Mayflower Hotel, until 10:00 P. M.

10:30 A. M. Meeting of Bar Association Cooperating Committees, Chinese Room, Mayflower Hotel. Members and guests of the Institute, not members of these Committees, are welcome to attend.

9:30 P. M. Reception by the Council to the members, guests and ladies accompanying them, in the Ball Room of the Mayflower.

Thursday, May 7

9:30 A. M. Registration and assembling of members and guests.

10:00 A. M.

1. Address by the President, George Wharton Pepper.
2. Informal remarks by the Chief Justice of the United States.
3. Report of the Treasurer, George Welwood Murray.
4. Report of the Committee on Membership, to be presented by the Chairman, George E. Alter.
5. Report of the Director, William Draper Lewis. Opportunity will be given for questions from the floor.
6. Report of Herbert F. Goodrich, Adviser on Professional Relations. (Opportunity will be given for questions from the floor.)
7. Election of Council Members to fill the vacancies caused by the death of George W. Wickersham and William I. Grubb.
8. New business.

11:30 A. M. Consideration of the Proposed Final Draft of the Restatement of Property.

1:00 P. M. Adjournment for luncheon.

2:15 P. M. Continuation of the discussion of Property.

5:00 P. M. Adjournment.

5:00 P. M. Reception and Tea for members, guests and ladies, in the Chinese Room.

Friday, May 8

9:30 A. M. Registration.

10:00 A. M. Consideration of the Proposed Final Draft of the Restatement of Restitution and Unjust Enrichment: Part I, Quasi-Contracts.

1:00 P. M. Adjournment for luncheon.

2:15 P. M. Consideration of the Proposed Final Draft of the Restatement of Restitution and Unjust Enrichment: Part II, Constructive Trusts.

5:00 P. M. Adjournment.

7:30 P. M. Annual Dinner in the ball room of the Mayflower. George Wharton Pepper, President, will preside. The speakers will be Judge Learned Hand, and Sir Wilmott Lewis, Washington correspondent of the London Times.

Saturday, May 9

9:30 A. M. Registration.

10:00 A. M. Consideration of the Restatement of Torts, Tentative Draft No. 13.

1:00 P. M. Adjournment for luncheon.

2:15 P. M. Continuation of the discussion of Torts.

5:00 P. M. Adjournment.

Statute Allowing Comment on Failure to Testify Held Invalid

A CONSTITUTIONAL provision protecting the right against self-incrimination was the basis upon which the Supreme Court of South Dakota held invalid a statute which provided that in a criminal case the defendant's "failure to testify in his own behalf, is hereby declared to be a proper subject of comment by the prosecuting attorney." State v. Wolfe, March 21, 1936.

The court reasoned that this statute was an attempt to invade the privilege against self-incrimination indirectly, because the accused must either take the stand in his own defense or have the prosecutor claim he is guilty because he failed to do so. This indirect invasion, in the court's opinion, is just as reprehensible as a direct transgression. All authority is said to be to the contrary except one case, State v. Cleaves, 59 Maine 298, which the court does not consider to be persuasive.

"So far as we have been able to discover, South Dakota is the only State having a constitutional provision against self-incrimination that has undertaken, solely by legislative act, to authorize comment on the defendant's failure to testify. . . The successful attempt to change the rule in Ohio and the un-

successful attempts to change it in New York and Michigan were all three by constitutional amendment."

President Ransom's Engagements

ON Wednesday evening, May 6th, Judge Learned Hand of the United States Circuit Court of Appeals for the Second Circuit, and President Ransom will be the speakers at the annual dinner of the American Judicature Society, at the Hotel Mayflower, in Washington, D. C.

On May 23rd, the President of the Association will attend the meeting of the Junior Bar Conference for the Second Circuit, in New York City.

He will attend and address one of the sessions of the annual meeting of the Illinois State Bar Association, which meets at Peoria, Illinois, on May 27-29, and hopes also to be present at a session of the Georgia Bar Association at the General Oglethorpe Hotel, Wilmington Island, Savannah, Georgia, which meets on May 28-30.

It is expected that he will address also a dinner meeting of the Erie County Bar Association, at Buffalo, New York, on a May date not yet fixed.

The President of the American Bar Association has added Mr. James L. Kennedy of Greensburg, Pennsylvania, and Mr. E. T. Houghton, of San Francisco, California, to the Committee which will represent the American Bar at the dedication of the St. Ives Memorial Window, presented by the American Bar and installed in the Cathedral at Treguier, in Brittany, France.

Messrs. Kennedy and Houghton will attend the dedication exercises on May 18th.

The American Ambassador to France, the Honorable Jesse Straus, will be present. The Bâtonnier of the Bar at Paris will attend, with a committee of French "avocats".

The President of the American Bar Association has appointed Mr. Charles Nagel, of St. Louis, former Secretary of Commerce, and Mr. Charles H. Strong, of New York, as delegates to represent the American Bar Association at the Conference on The Future of the Common Law, to be held under the auspices of the Faculty of Law of Harvard University, Cambridge, Massachusetts, on August 19-21.

The Faculty of Law has asked the President of the Association to act *ex officio* as a member of the delegation from the American Bar Association.

The President of the American Bar Association has appointed, as the delegate to represent the American Bar Association at the annual meeting of the Canadian Bar Association, the Honorable William D. Mitchell, former Solicitor-General of the United States and former Attorney-General of the United States, now Chairman of the Advisory Committee constituted by the Supreme Court of the United States to draft Rules for the Federal Courts.

The annual meeting of the Canadian Bar Association will be held in Halifax, Nova Scotia, during the week preceding the annual meeting of the American Bar Association, and Mr. Mitchell will come from Halifax to the Boston meeting of the American Bar Association.

Lord Thankerton, Lord of Appeal in Ordinary and former Attorney-General of Scotland, will represent the Bar of Great Britain at the meetings of the Canadian Bar Association and the American Bar Association.

Reduced Rates for Boston Meeting

APPLICATION for reduced rates, for members who will attend the Boston meeting of the American Bar Association, the National Conference of Commissioners on Uniform State Laws, and affiliated groups meeting during the weeks beginning August 17th and 24th, has been favorably passed upon by the New England Passenger Association, and those purchasing round-trip tickets will be able to secure the same at reduced convention rates.

Individual identification certificates to be used in the securing of such reduced rates, will be distributed to all members of the Association, with the Advance Program of the meeting, which will be sent out on or about July 20th; and at the same time, detailed information concerning dates of sale and rates to be secured, together with instructions for using the certificates, will be published in the Advance Program.

Conference on Pending Plan for Bar Organization

ON Thursday evening, May seventh, at 8:30 o'clock, the American Bar Association will hold a conference at the Hotel Mayflower, Washington, D. C., for all interested in the pending plan for the better organization of the American Bar and the creation of a House of Delegates of the legal profession in the United States, under the auspices of the Association.

Officers and members of the American Bar Association or of State and local Bar Associations, as well as lawyers who are not members of any Bar Association, are invited to attend this conference.

The pending plan will be further explained and discussed, but it is not expected that definitive action will be taken by the conference. President William L. Ransom of the American Bar Association and members of the General Council and Executive Committee will attend the conference.

New York Unemployment Insurance Law Held Constitutional

THE New York State Unemployment Insurance Law was held to be constitutional by the New York Court of Appeals in a five to two decision rendered on April 15. Previously lower courts in New York had divided on the validity of the measure, which was passed to comply with the federal Act.

The central point of controversy over the act hinged on the provision by which employers were to contribute to a fund for the jobless. In the opinion of the majority this was not "so arbitrary or unreasonable as to show it deprives any employer of his property without due process of law." The dissenting judges declared that the act violated "due process of law" and should, therefore, be declared invalid. Three suits had been brought to the court's attention, in all of which E. F. Andrews, State Industrial Commissioner, was the defendant. The plaintiffs in the respective suits were W. H. H. Chamberlain, Inc., E. C. Stearns and Co., and Associated Industries of New York State.

In each suit the complaint asked for a declaratory judgment that the act in question was unconstitutional. One lower court had said the act was unconstitutional in its entirety; another had held it valid except in so far as it provided for payment to those who had been discharged or left unemployed as a result of a strike after a certain period of time. The Court of Appeals, however, upheld the act in its entirety.

The court takes judicial notice of the extent of unemployment and the acuteness of the problem which the measure was designed to ameliorate. The state must, of necessity, act somehow under such conditions, the court says, calling attentin to the vast sums that have been spent on relief. "The fact is that in the past few years enormous sums of State and Federal moneys have been spent to keep housed and alive the families of those out of work who could not get employment. Such help was absolutely necessary, and it would be a strange sort of government, in fact no

(*Continued on page* 356)

MAKING THE ANNUAL MEETING ATTRACTIVE AND USEFUL

The Case for Adoption of the Pending Plan Could Be Safely Rested on What It Does in this Direction—Extent of Present Participation in Meeting by Average Member—Need for Genuine and Open-Minded Discussion—What the Plan Offers to Those Who Attend —The 1936 Annual Meeting

By William L. Ransom
President of the American Bar Association

THE case for the adoption of the pending plan could safely be rested on what it means by way of added attractiveness and actual usefulness for the annual meeting of the American Bar Association. Some persons have expressed the fear that, as a result of giving to *all* of the members of the Association the opportunity to nominate and elect the State Delegates and decide the major policies of the Association, the annual meetings will not be as largely attended as heretofore, for the reason that the average member present will have less to say and do. This concern does not seem to me to be well-founded. On the contrary, the adoption of the plan seems to me a necessary step toward making the annual meeting a gathering to which a much larger number of lawyers will gladly come.

Because I believe that important purposes, for the profession and the public, can and will be served by the discussions and the understandings developed in a great annual meeting of lawyers from all parts of the United States, I favor the adoption of the pending plan. If choice had to be made between arousing the interest and participation of 28,000 members of the Association, or merely the 2500 or 3000 to whom the journey to an annual meeting has an appeal, I would unhesitatingly say that the Association belongs to the members at home and should be under the control of the members at home; but no such choice of alternatives is presented. The plan seems to me to clear the way for making the annual meeting a more useful and vital occasion.

The Extent of Present Participation by the Average Member

Before anyone concludes that the pending plan would take away from those at the convention any privileges or participations hitherto actually enjoyed and exercised, we should see just what part the average member has in the conventions as heretofore conducted. So far as participating in the decision of the policies or the choice of the officers of the Association, it seems to me that the average member has heretofore attended the convention as he would go to an opera or to a baseball game, to watch something in which he has no real part.

The convention program is so crowded with committee reports and routine matters as to leave little time for outstanding addresses and no time for leisurely and open-minded discussion of major matters. In the nature of things, nearly all of the Committee reports are of such a character as to preclude their adequate consideration by a large assemblage; they can much more soundly be studied and dealt with by a smaller but representative body.

At the convention, the average member has the opportunity to attend a hurried "caucus," once in three years, at which a few of the members from his State select a member of the General Council; but neither the rank and file of the convention attendance nor the great number of Association members at home have any real part in the nomination or election of officers of the Association. Only twice in the history of the Association has the election of officers been anything except a last-minute ratification of selections made by the General Council, and in the last instance of a contested election, some 300 members took part, out of a convention registration exceeding 2000.

The Plan Could Not Lessen a Participation Which Does Not Exist

The pending plan could not take away a participation which does not actually exist. On the contrary, it gives to the average member an actual part in the convention, and enables the convention to become a really deliberate body, in which all members present may take part.

Before analyzing what the plan offers in these respects, there are two observations which may well be made: In the first place, it is undoubtedly true that a great many members now come to the conventions considerably for the sake of the friendships and acquaintances formed and treasured. A potent consideration, with many, is the trip to the convention city and the visits to intermediate points, in congenial company, with the opportunity of seeing different parts of the country from year to year. The fact that the convention is necessarily held during July, August, or September, also tends to vacation mood.

It would be too much to expect, and altogether undesirable, that these friendly and holiday aspects of the annual meetings should be eliminated or lessened. The American Bar Association can offer to the average lawyer nothing so enjoyable and advantageous as the staunch friendship of many lawyers from all parts of the United States. At the same time, I have no doubt that nearly all of those who come to the con-

Note: This is the *third* of a series of articles written for the American Bar Association Journal, in explanation and discussion of the pending plan for an improved organization of the American Bar Association. "The House of Delegates of the Legal Profession" was discussed in the March issue, and "The Pending Plan and the Member Who Does Not Come to the Annual Meeting" were discussed in the April issue. References to articles and Sections are to the plan as published in the February Journal. Pamphlet copies of the plan are available on request to American Bar Association Headquarters.

ventions will be glad to attend and take part in the sessions, if the latter are made truly attractive and profitable for the average member.

The Need for Genuine and Open-Minded Discussion

In the second place, what I have seen in many State and local Bar Associations leads me to believe that American lawyers will welcome the creation of a genuinely open National forum for the discussion of the many matters which are of such intense importance to the profession and the public. I do not know why open discussion should be feared or avoided, in the American Bar Association. Divergence of views and diversity of experience will be disclosed, no doubt; but the development of a consensus of reasoned opinion and action is more likely to come from discussion than from timid avoidance. It is hardly to be expected that American lawyers will agree upon everything they discuss; but open-minded debate and interchange of sincere views is far more wholesome than any suspicion of suppression.

I believe that American lawyers represented in the American Bar Association can afford to risk whatever hazards there may be in facing fairly and earnestly the conditions which beset their profession and distress mankind. A truly representative organization of a majority of American lawyers could not afford to do less. Genuine discussion in the meetings will be helpful to the members at home, who will have the final decision on major questions of policy.

It seems to me that the rank and file of lawyers have in these times not only the right to be heard, but also the duty to speak and to speak outspokenly, on the problems which confront the profession and their country. The American Bar Association should furnish the forum for an interchange of views and the development of a National consensus of opinion. Limited and minority leadership has not been so successful or effective as to be entitled to withhold such an opportunity.

What the Plan Offers to Members Who Come to the Convention

The 2500 to 3000 members attending an annual meeting constitute the Assembly (Article IV). The make-up of the Assembly varies in large part from year to year, according to the part of the United States in which the annual meeting is held. Sessions of the Assembly will be held from time to time during the annual meeting, about as heretofore.

The sessions of the Assembly will constitute a forum for worth-while discussion, and will play a real part in the determination of the policy of the Association. The important provision is that of Article IV, Section 2, which is as follows:

"Section 2. *Resolutions and Open Forum Session.* At the opening session of the Assembly at each annual meeting any member of the Association may present in writing any resolution pertinent to the legal profession or to the objects of the Association, or in relation to any report by any officer, section, or committee of the Association. Resolutions so offered shall be referred to the Resolutions Committee, without debate at that time. Thereafter, during that annual meeting, the Resolutions Committee shall hold a public hearing upon the resolutions so offered and referred, together with such other written resolutions as, prior to such hearing, have been received by the Resolutions Committee. At such hearing the proponents and opponents shall be given a reasonable opportunity to be heard. The Resolutions Committee shall thereafter report its action on such resolutions, with any amendments thereof or comment thereon, to an open forum session of the Assembly during such week. At that session the Committee's report shall be open to debate by the Assembly and a vote shall be taken thereon. The President shall thereupon report to the House of Delegates such resolution adopted by the Assembly, for action by the House of Delegates. The House of Delegates shall thereupon approve, disapprove, or modify such resolution, and its Chairman shall report its action thereon to the Assembly, at or before its open session on the last day of the annual meeting, with a statement of reasons in case of disapproval or modification. In case of any such disapproval or modification, the Assembly may direct a referendum to the membership of the Association upon its original or modified resolution, to be conducted by the Board of Elections."

Instead of being compelled to listen to the formalizing of a lot of Committee reports which do not interest him, any member may bring up any matter, including any Committee report, which interests him. He is given a right to have the matter heard and acted on, in an orderly and deliberate way, without suppression by points of order.

If the Assembly and the House of Delegates disagree on a matter of Association policy, the Assembly may require the submission of the matter to a referendum vote of the membership, under Article V, Section 10.

Election of Representatives of the Assembly in the House of Delegates

Each year the members of the Association present at the convention will nominate from the floor, and elect by ballot, five Delegates to represent the Assembly in the House of Delegates (Article IV, Section 3).

This will give to the members present an actual participation in the processes of nomination and election, such as they have not heretofore exercised, and will be in addition to their participation in the nomination and election of the State Delegates, at home and before the convention.

Each State Bar Association and participating local Bar Association will select its Delegates in such manner as it sees fit, and may do so by mail ballot of its members if it so desires (Article V, Section 5).

A majority of the State Bar Associations within a Federal judicial Circuit may also decide that the member of the Board of Governors from that Circuit shall be elected by mail ballot of the members of the American Bar Association within that Circuit, at the option of such State Bar Associations (Article VIII, Section 4).

The Meetings of the Sections and Their Representation in the House of Delegates

The pending plan makes the Sections and their work an integral part of the Association and its work (Article IX, Section 1). The present lack of unified relationship has been regrettable.

The members of each Section present at the annual meeting will nominate and elect its officers and Council (Sections 2 and 3).

The Chairman of each Section, so elected, will be a member of the House of Delegates (Article V, Section 3); and each Section will thereby have a spokesman on the floor of the House of Delegates.

The nomination and election of Section Chairmen will take on an added importance, as one of the avenues to membership in the great House of Delegates of the legal profession.

The 1936 Annual Meeting

The program for the 1936 annual meeting is being prepared with the expectation that the pending plan will be adopted by the convention on Monday afternoon, August 24th, and that the new provisions will

thereupon go into effect. A most representative Resolutions Committee has been appointed, under the Chairmanship of Justice L. B. Day of the Supreme Court of Nebraska, until recently president of the Nebraska State Bar Association. Opportunity for the offering of resolutions, for reference to that Committee, will be given on the opening day of the convention.

The nomination and election of officers and members of the Board of Governors, at the 1936 convention, will take place under the *present* procedure (Article VIII, Section 6). Nominations will be made by the State Delegates (the present General Council) and will be reported to, and voted upon by, the Assembly. It was deemed to be undesirable to change the rules for the 1936 elections, while the canvass was in progress.

The Circuits which will elect members of the Board of Governors in 1936 are those specified in Article VIII, Section 3. This follows from the continuance in office of members of the Executive Committee for the remainder of the terms for which they were elected.. In the year 1936, nominees for members of the Board of Governors need not be members of the House of Delegates (Article VIII, Section 6).

The Conference of Bar Association Delegates

The Bar Associations should select and send their representatives to the meeting of the Conference of Bar Association Delegates in Boston, as heretofore.

Adoption of the pending plan will change the *name* to the Section of Bar Organization (Article IX, Section 1), in order to obviate any confusion which might come from having both a House of Delegates and a Conference of Bar Association Delegates; but the officers, Council, by-laws, etc., of the Conference will be continued, for the Section of Bar Organization (By-laws—Article XII, Section 6), which will continue to have a most useful function to perform, as a clearing-house for the consideration of improvements in local Bar organization and other matters.

The Chairman of the Section of Bar Organization will be a member of the House of Delegates, and will represent therein the smaller local Bar Associations, not directly represented in the House of Delegates.

For the Boston convention, the program and sessions of the Conference of Bar Association Delegates will proceed as heretofore, and a large attendance of Bar Association delegates is desired. On Monday evening, August 24th, a large informal dinner will be held under the auspices of the Conference of Bar Association Delegates.

Other Features of 1936 Convention

I agree with anyone who says that a National convention of the Bar cannot be made more attractive and useful, merely by changing the applicable rules. The decisive things are, of course, inherent in the friendly spirit and the public purposes of the meeting. In 1936, we hope to make a start in the right direction. If the new plan is worth adopting at all, it should begin to function in 1936, without waiting a year. Such a "lag" would chill and kill the present enthusiasm and interest.

The first event of the 1936 convention will be an informal reception, at the Hotel Statler, from 4 to 6 o'clock on Sunday afternoon, August 23rd, to all new members (those who have joined the Association since July 1, 1935) and all members who are attending an American Bar Association meeting for the first time. It is hoped that this will be a friendly and truly enjoyable convention.

Through clearing the Assembly calendar of the mass of formal matters, it will be possible to hold, in Boston, "open forum" sessions on subjects of interest and importance to lawyers in their professional work, such as Federal Taxation, professional ethics and grievances, commerce, and other subjects. The "open forum" session for receiving the report of the Resolutions Committee will take place on Thursday, August 27th, and should provide a most interesting session. Any member of the Association may take part in the discussions at these "open forum" sessions.

To go to historic and scenic New England, to have the opportunity of visiting many shrines of American law and institutions, to have the privilege of meeting and hearing distinguished foreign guests who are spokesmen of law and justice in other lands, and to join in taking a decisive forward step for the better organization and leadership of the legal profession, are among the opportunities afforded by this year's convention of the American Bar Association, in Boston, Massachusetts, during the week of August 24, 1936.

RECENT CHANGES IN BAR ADMISSION REQUIREMENTS*

By WILL SHAFROTH

Adviser of Section of Legal Education and Admission to the Bar

CHANGES in requirements for admission to the bar during the past year may be divided into three general categories, those providing for an increase in the amount of general education or legal training, those making some alteration in the definition or the machinery of existing requirements, and those relating to the admission of foreign attorneys.

Increased Requirements of Education and Training

During the period from the autumn of 1934 to the autumn of 1935 four states, Nevada, Utah, North Carolina, and Vermont, adopted the requirement of two years of college education or its equivalent. Vermont, with a requirement of a high school education, was the only one of these which previously demanded any general education of applicants for admission to the bar. In Utah, Vermont and North Carolina the college requirement must now be fulfilled before the commencement of law study. The new rules in all of these states require a minimum of three years of legal training and in Utah four years are required unless the applicant is a graduate of a full-time school approved by the American Bar Association. Nevada previously had no re-

*Extract from the *Annual Review of Legal Education for 1935* published by the Section of Legal Education and Admissions to the Bar of the American Bar Association.

quirement as to the length of the period of law study, while North Carolina's provision specified only a two-year period. The new rules in Nevada and Vermont were prescribed by the supreme court, while in North Carolina and Utah they were passed by the governing board of the incorporated state bar and subsequently received supreme court approval. In each of these states the rules have their individual variations which must be added to the variegated pattern of bar admission requirements in the United States.

Nevada, the first of the four to act, requires all applicants commencing law study after the fifteenth of April, 1934, and all applicants applying to take the bar examination after January 1, 1936, to have two years of college education, or its equivalent and three years of study in a law school or an equivalent amount of time in private or office study. There is no provision that the general education must be completed before the commencement of law study.

Vermont's provision that the applicants before beginning the study of law must have one-half the work required for a bachelor's degree in a college approved by the court or an equivalent general education, applies to students beginning the study of law after August 31, 1938; as to others, the prevailing high school requirement governs.

In Utah applicants applying after July 1, 1936, and until July 1, 1937, are required to have one year of college or its equivalent, and applicants applying subsequently are required to have two years. In all cases the college work must be completed before law study is commenced. The requirements of legal education are effective immediately. The applicant must either have three years of full-time study in and graduation from a law school approved by the American Bar Association, or four years of study in such a school and passage of three-fourths of the degree requirements, or else four years of study outside of a law school. A combination of law school study and study outside of a law school is permitted but no law school study is recognized except in a school approved by the American Bar Association.

North Carolina reaches its pre-legal requirement by a still more gradual step. Applicants applying to take the bar examination after July 31, 1938, and until August 1, 1940, must have a high school education or its equivalent. Those applying on or after the latter date must have two years of college education or its equivalent before beginning law study. An exception is made in the case of students who have secured special admission to approved law schools without the necessary general education and who have studied and passed the required list of subjects. Law study may be conducted in a school approved by the court, those approved schools in North Carolina now being the ones belonging to the Association of American Law Schools and on the approved list of the American Bar Association, or in an office under the supervision of a member of the North Carolina bar who has been licensed to practice in that state for five years, or by a combination of these methods. The period of study in any case is three years.

Improvements in Admission Machinery

The second classification above referred to covers a variety of provisions designed to perfect and improve bar admission standards and examination machinery. Of the nine states which have made changes in these directions, probably Ohio and Texas have taken a larger step than any of the others. By rule of the Supreme Court of Ohio, law office and private law study are abolished except for students registered before September 1, 1935; for others, three years of study in a full-time school or four years of study in a part-time school are required and after July 1, 1939, applicants for the bar examination must have a degree from a law school approved by the American Bar Association or from an Ohio law school belonging to the League of Ohio Law Schools or from a law school outside of Ohio not approved by the American Bar Association which maintains standards equal to those maintained by the League of Ohio Law Schools. There seems little likelihood that many schools outside of Ohio not approved by the American Bar Association will qualify under this provision as the rules provide as to any such school that it can be certified to meet the standards of the League of Ohio Law Schools only after an inspection, the cost of which must be paid for by the applicant. Registration is required of residents at the beginning of law study but non-residents may register one year before they take the bar examination.

During the past year Texas has taken the important step of abolishing its diploma privilege as to applicants applying for admission after June 30, 1937. Until that time graduates of thirteen schools outside of Texas approved by the American Bar Association and of eight local Texas law schools may be admitted on their law school diplomas.

In Arkansas notable improvement is taking place by virtue of the appointment of a central bar examining board for the state which has been authorized during the past year. The first examination given by the central board was held in January of 1936. This replaces a system of examination by eighteen local boards, which, in some cases, was reported to be a rather perfunctory process.

Pennsylvania has continued to refine its process of determining the eligibility of an applicant for admission to the bar by requiring the county boards to pass upon the "fitness and general qualifications (other than scholastic)" of the applicant, and by relieving the county boards of the necessity of stating their reasons for rejecting the applicant whom they consider unfit. A favorable report by the local county board is required before the applicant is permitted to take the bar examination.

West Virginia has again defined more closely the list of schools in which law study must be pursued, the present specification being "schools that are members of the Association of American Law Schools or law schools that are fully approved by the Council of the American Bar Association on Legal Education and Admissions to the Bar." In Montana one bar examination will be held annually instead of two. In Maryland, where a high school education or its equivalent is accepted as fulfilling the general educational requirements, the equivalent is more closely defined than in the past by giving the subjects required and providing an examination under the supervision of the board of bar examiners on specified subjects.

Continued interest in a system of probationary admission to the bar has been evidenced by legal education committees in various parts of the country. New Mexico, the only state which now has such a provision in effect as to original applicants, requires a one-year period after a temporary license is granted before it is made permanent. During the past year the board passed a resolution, which may be regarded as a record of its policy, providing that when the applicant granted a temporary license comes up for a permanent license,

he must submit his affidavit showing that he has established a law office and actually held himself out as a practicing attorney during the preceding year and he must also have a certificate from the district judge that he has practiced law in the district for the period of a year and is recommended by him for permanent admission.

A unique provision contained in rules promulgated by the Massachusetts Supreme Judicial Court provides that disbarred lawyers may file application for readmission not earlier than five years after the judgment of disbarment and that thereupon the bar examiners shall report to the court the intellectual qualifications and legal attainments of such candidates, all other questions respecting their admission being reserved for the decision of the court without recommendation. It would seem that under this provision such applicants would be subject to examination by the board.

Admission of Foreign Attorneys

The third group of changes referred to relates to the admission of foreign attorneys and to an increase in fees for that class of applicants. The tendency to restrict their admission has borne fruit in Wyoming in a requirement that such applicants shall have been bona fide residents of that state for a six months' period before a certificate of admission is issued and "shall be admitted only upon such examination as may be required by the board." Eight other states also have the six months' requirement. The new North Carolina rules require twelve months' residence. In California, where the attorney is required to take an examination designed especially for the immigrating lawyer, the committee of bar examiners previously conducted the examination twice a year at the same time as the bar examination for original applicants. To simplify the machinery and to facilitate the admission of foreign attorneys, these special examinations are now given four times a year.

A more rigorous investigation into the records and past careers of immigrant attorneys has long been recognized by bar admission authorities as being desirable but only within the past two years has any national agency undertaken this work. Beginning in the spring of 1934 The National Conference of Bar Examiners announced that it was prepared to conduct investigations of attorneys applying for admission on motion in one state by virtue of a previous period of practice in another. California and Delaware were the first to adopt this service and have since been followed by Washington, Nevada, Texas, Oklahoma, Minnesota, Missouri, Florida, Alabama, Utah, Indiana, and Oregon. The last seven of these states have taken this action since February 1, 1935. The following resolution passed at the 1935 meeting of the American Bar Association indicates that the service rendered by The National Conference in this respect is meeting with approval:

"WHEREAS, Adequate examination of the character and record of migrant attorneys seeking admission in one state on the basis of practice in another is fundamental in maintaining proper moral standards of admission to the bar, and

"WHEREAS, The National Conference of Bar Examiners has established a service by which a thorough investigation of such attorneys is made,

"NOW, THEREFORE, BE IT RESOLVED: That the American Bar Association approves the plan of character examination used by The National Conference of Bar Examiners to investigate the character and record of migrant attorneys applying for admission to various states on a comity basis and recommends the use of this investigation service by the several states."

A uniform fee of twenty-five dollars is charged for each character examination and report, and the following increases have been made in admission charges for foreign attorneys during the last two years to meet this expense and in some cases to provide additional funds for the board. In several states the applicant is required to pay the fee for the character report directly to The National Conference instead of having that payment go through the board.

	Fees for Admission on Motion	
	Former Fee	Present Fee
Alabama	$ 10	$100
California	100	100
Delaware	None	25
Florida	25	25
Indiana	15	40
Minnesota	25	100
Missouri	10	100*
Nevada	15	65
Oklahoma	10	10*
Oregon	50	75
Texas	16	40*
Utah	25	50
Washington	50	50

*Attorney-applicant pays National Conference an additional $25 direct for character report.

Changes Since September, 1935

While the table of admission requirements gives the rules in effect September 1, 1935, it was considered useful to indicate also changes concerning which information was available up to April 1, 1936. The four major changes which occurred within this period are the adoption by Indiana for all except law office students of a rule of two years of pre-legal college education and three years full-time or four years part-time law school study in a law school following the general principles laid down in the American Bar Association standards; the promulgation of new supreme court rules in Oregon requiring of applicants after August 1, 1941, two years of college or its equivalent and after July 31, 1940, successful completion of a regular course of study in a law school approved by the Supreme court; a requirement of non-preliminary high school education effective after July 1, 1936, in Florida; and a bill passed in Virginia requiring a minimum in all cases of two years of law study effective July 1, 1938. In the first three instances the rules were promulgated by the supreme courts of the states. With the promulgation of the new rule in Florida, there now remain two states, Arkansas and Georgia, which have no requirement of genera education whatsoever. Two years ago there were eight states in that category.

The Cannon case in Wisconsin* is probably the most recent adjudication of the invalidity of a legislative attempt to secure admission to the bar for an individual through a special act. Nevertheless efforts in this direction continue to be made and two states have passed special acts purporting to qualify individuals meeting certain requirements but actually designed to secure admission to the bar for a definite person in each case. During its 1936 session the Kentucky legislature passed a bill, apparently introduced by a legislator for securing his own admission to the bar. It provided that any applicant who had been a teacher for four years, a county judge or circuit court clerk for four years and a member of the General Assembly, and who

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*206 Wis. 374, 240 N. W. 441.

FOURTH CIRCUIT REGIONAL MEETING SHOWS VALUE OF SUCH GATHERINGS

Increasing Importance of the Role Which They Will Play in Bar Organization Activities Indicated by Large Attendance and Interest in Proceedings—Judge Parker Delivers Address of Welcome—Addresses Made by President William L. Ransom, Hon. Newton D. Baker, Judge D. Lawrence Groner, Alexander Armstrong and Chairman Walter L. Brown of the Association's Junior Bar Conference

By WILL SHAFROTH
Director of National Bar Program

MORE than four hundred members of the bench and bar from the fourth federal judicial circuit and the District of Columbia gathered in Richmond, Va. on the 10th and 11th of April to participate in the largest regional meeting of lawyers which has yet been held in this country. The great success of this meeting, the outstanding nature of the program and the abundant hospitality of the Virginia lawyers who acted in the capacity of hosts, all offer convincing proof that this type of gathering is destined to play an increasing role in the work of the American Bar Association, and will result in bringing its work and activities closer to the average practitioner. Each regional meeting which has been held this bar year has brought an increasing attendance from surrounding states and with every such gathering interest seems to mount and new ways are found to make these conferences more stimulating and attractive.

Credit for the pre-eminent success of the fourth circuit meeting goes to Robert B. Tunstall, general chairman, who is vice president of the American Bar Association for that circuit, to his efficient committees, to his vice chairmen in each of the states and the District of Columbia, and last but not least to the Richmond bar who were the hosts at the brilliant dinner in the Commonwealth Club which formed a fitting climax to the occasion. One who attended the meeting as a guest can only with the greatest difficulty write of it in terms of moderation. The spirit of hospitality and its tangible manifestations were so abundant, and the program was so excellent that it is difficult to believe there would not have been a hundred percent attendance of fourth circuit lawyers, had they fully realized the treat which was being provided.

Starting informally with a buffet luncheon on Friday afternoon, where opportunity was given to greet and mingle with friends from all parts of the circuit, the official program commenced a little after two o'clock when Mr. Tunstall introduced Mr. Stuart B. Campbell, President of the Virginia Bar Association, who presided at the first session. The address of welcome was given by the Honorable John J. Parker, senior Circuit Judge of the United States Circuit Court of Appeals for the Fourth Circuit. With an eloquence for which he is well known, Judge Parker pointed out the serious task which rests on members of the bar in these times. He said in part:

"It seems to me that a very important function can be performed by regional conferences of this character. State bar associations are necessarily engrossed with local problems. The American Bar Association has become so large that inevitable specialization has restricted the general character of its deliberations. A meeting such as this should lead to a discussion of the larger problems confronting the bench and bar by men who are leaders of the profession over a wide and important territory. It is not too much to hope that such meetings will result in much good to the profession and to the country as a whole. What was said by De Tocqueville a hundred years ago is true today. 'The lawyers of the United States form a party which is but little feared and scarcely perceived, which has no badge peculiar to itself, which adapts itself with great flexibility to the exigencies of the time, and accommodates itself to all the movements of the social body; but this party extends over the whole community, and it penetrates into all classes of society; it acts upon the country imperceptibly, but it finally fashions it to suit its purposes.'

* *

"The problem which confronts the lawyer is not merely one of change, but also of conservation—of preserving the essential truth in our institutions while adapting them to meet the needs of changed conditions. There is grave danger that in the zeal for reform we may sacrifice the very principles upon which alone true reform is obtainable, that in our desire to make the lot of the average man more secure, we may sacrifice that liberty without which security is worth nothing. Dr. McIlwain, Eaton Professor of Science of Government in Harvard University, in a recent article in the quarterly 'Foreign Affairs' says: 'The one great issue that overshadows all others in the distracted world today is the issue between constitutionalism and arbitrary government. The most fundamental difference is not between monarchy and democracy, nor even between capitalism and socialism or communism, tremendous as these differences are. For even in any socialistic or communistic regime, as now in every bourgeois democracy, there will be rights to be preserved and protected. Deeper than the problem whether we shall have a capitalistic system or some other enshrined in our law lies the question whether we shall be ruled by law at all, or only by arbitrary will.'

"When we look to Europe the truth of the observation is apparent. But the issue is not confined to Europe. Here also the false philosophies which have undermined the liberties of European peoples are struggling for recognition. We have, on the one hand, those who in the name of the people would crush the liberty of the individual beneath the planned economy of a socialistic state; on the other, those who, crying that democracy has failed, would, in the name of efficiency, supplant popular government with some

form of dictatorship. Either would give us the tyranny of the totalitarian state.

"If Dr. McIlwain is right in his diagnosis, let me remind you that this challenge to constitutionalism is the supreme challenge to the lawyer and that it is he who must meet the issue presented by the forces which threaten our civilization. Lawyers differ about many things, but there are some things that we do not differ about. One of them is that law is founded on reason and not on force; that might does not make right, whether it be the might of armies, the might of kings or the might of majorities; that in human society, certain rights appertain to man as man of which no power in the state may deprive him; and that the securing of these rights is the greatest and most important end of government. It is for this that our constitutional system stands, but its attainment was the aim of lawyers before ever that constitutional system was evolved. I think there is no brighter page in the history of the law than that which tells of Sir Edward Coke, who, when he was brought before James I and censured for a judgment which he had rendered and asked what he would do if the case should rise again, answered: 'When the case happens, I shall do that which shall be fit for a judge to do,' thus affirming his faith in the independence of the judiciary and the constitutional rights of Englishmen, which might be asserted even against the power and prerogative of the king.

"In America sovereign power, the power of ancient kings, resides in the whole body of the people; but lawyers know that unless that power is exercised in accordance with established constitutional principles, tyranny will result just as inevitably as in a monarchy. They know that these principles are as important today as they were when our Constitution was written. Changed conditions have required changes in statutory laws, but not in the fundamental principles upon which these laws are based. These it is the supreme duty of the lawyer to preserve."

Judge William L. Ransom, President of the Association then spoke on "The Better Organization of the Legal Profession in the United States." He thanked and congratulated the organizers and participants in the conference on behalf of the American Bar Association and continued:

"This is a most appropriate site for a gathering of lawyers who seek to have their profession do its part in improving the administration of justice and the observance of the law, throughout the United States. Here the high traditions of our profession are exemplified and fulfilled, and the faith of the fathers is the creed of life. We pay reverent homage to the memory of the great and gallant men who have led your Bar and rendered distinguished services to their country, and we are grateful for the gracious hospitality of such a City and State.

"Regional meetings have an important part in the upbuilding of interest in the American Bar Association and in bringing that Association closer to the average lawyer in general practice. These regional gatherings are a new feature of the work of the American Bar Association, and they are proving most agreeable and effective. Unfortunately, the large majority of the members of the Association do not feel that they can come to its annual conventions. Many of these lawyers do come to these regional meetings. If the lawyers cannot come to the American Bar Association, we take the Association out to the lawyers, in their home circuits. I hope you all will come to the Boston convention next August, if you are in accord with what the Association is trying to do.

"The opportunities for acquaintance and conference, through these regional meetings, are most valuable. It is all a part of the process of bringing the American Bar Association closer to the average lawyer and placing the National organization of the Bar completely in the hands of the Bar Associations of all the States and of the members in those States. This is an occasion particularly important, because we have come together to discuss, among other things, the practical ways and means of accomplishing that democratic result and of making the American Bar Association truly representative of the legal profession throughout the United States."

After an able exposition of the details of the plan for a more representative organization of the bar, which will be considered in Boston, he concluded with the following:

"An effective organization of the lawyers of the United States is of public importance, and should be of general public interest. Active State and local Bar Associations are necessary foundations for effective National organization, and the superstructure cannot be better than its foundations. At the same time, State and local organization alone is not sufficient to maintain and protect the interests of the public and the profession."

Mr. Alexander Armstrong, former Attorney General of Maryland, one of its Commissioners on Uniform State Laws and also formerly a member of the General Council, talked on the same subject in an interesting manner from the point of view of state and local bar associations. He stressed the desirability of a closer connection between these organizations and the American Bar Association, and stated that the new plan would bring this about and would permit the majority of the lawyers of this country for the first time, through a representative system, to express their considered opinion on problems of national importance to the bar. He stated that a new consciousness of their duties and powers and a new interest was appearing in the work of bar associations everywhere and felt sure they would welcome this opportunity for common efforts on a national basis, which would not in any way interfere with their local autonomy. There was then a brief discussion from the floor, led by Mr. Thomas M. Boulware, President of the South Carolina Bar Association, and participated in by Mr. Maurice D. Rosenberg of Washington, D. C., Mr. Alexander H. Sands of Richmond, Mr. Junius G. Adams of Asheville, N. C., and Mr. Patterson of South Carolina.

The banquet held in the beautiful ballroom of the Commonwealth Club was the kind which lawyers like to remember and talk about for a long time as similar occasions which reach its height of perfection are of rare occurrence. The Richmond bar were the hosts to the visiting lawyers for this dinner. As the capacity of the club was limited, it was necessary for the visiting ladies and a few of the lawyers to dine at the Jefferson Hotel, but places were found after the truly sumptuous repast for all who desired to come for the speaking. Mr. Joseph F. Hall, President of the Bar Association of the City of Richmond, introduced the Honorable Preston W. Campbell, Chief Justice of the Supreme Court of Appeals of Virginia, who briefly and in a very fitting manner presented Mr. Newton D. Baker, the speaker of the evening. Mr. Baker's subject was "James Madison," the centenary of whose death occurs this year, and the career of that great Virginian gave full scope for the charming style and historical knowledge of the former Secretary of War. No compliment is too fulsome to be paid to the speech of the evening and it kept the large audience keenly interested to its close.

"All that we know of the writing of the Constitution," Mr. Baker said, "all that we may ever know, we owe to James Madison. From his first entrance into public life he kept an exacting diary.

"Madison was not an orator, but a concise, honest, clear-headed speaker. He came back to Virginia to explain the remarkable document which had been adopted. Even the fiery eloquence of Patrick Henry could not prevail against the cogency and expository powers possessed

by Madison. Washington relied most upon Madison, the exacting student, the actual historian, the political philosopher of the convention which wrote our Constitution.

"No great event in history was so completely dependent upon the courage and character of one man as our Revolutionary War was dependent upon Washington. But for Thomas Jefferson's faith and knowledge, free government in this country could not have been established. The constitutional convention was dependent upon the genius, the intelligence and the persistence of Madison.

"Nowhere in history can you find three young men so widely informed of the sweep of human history from the great Greeks down to their day, as were Madison, Hamilton and Jay.

"Greek democracies went to pieces because they never found a way to federate themselves into a central government with power enough to keep it alive. . . Rome tried the other extreme, an all-powerful central government, and decayed for two reasons, those of extravagance and rebellion by outlying provinces. America struck a medium between these two ancient governments and established a democracy resting upon the consent of the governed."

Commenting on the tendency of present day public servants to regard the United States Senate as the highest goal of their ambitions, Mr. Baker reminded his audience that "for 60 years in the early life of the nation, men eagerly resigned from the Senate of the nation to become Governor of their State."

It is regrettable that Mr. Baker's remarks are not available in full for publication as his address was regarded as a memorable one by those who heard it.

The Saturday morning session was presided over by Mr. George M. Morris of Washington, D. C., Chairman of the General Council of the American Bar Association.

Mr. Walter L. Brown, Chairman of the Junior Bar Conference of the American Bar Association gave an able summary of the development and work of that Section, explaining its nature and something of its history. He emphasized that it was not an entity separate from the American Bar Association, and that the Association had not divided its members into older and more established lawyers and neophytes, thereby implying some lack of capacity in the latter. Actually he said the Junior Bar Conference was simply a separate section of the Association open to members under thirty-six, and that for such members the activities of the Conference supplemented, but did not supplant, the general activities of the Association. Mr. Brown pointed out the manner in which the Conference was organized on a national basis with state and local chairmen throughout the country, and showed its usefulness as a vehicle for the expression of the views of the younger element of the bar, the nature of its function at the annual meeting, and the manner of its operation between meetings. He discussed the current program of the Conference, and after reviewing some of its specific accomplishments thus far and telling of the unprecedented interest and activities of the younger lawyers of the country in Association matters, he expressed the belief that in the future the Conference would have a predominant part in creating a united and active profession, strengthening and giving body to that coordination of the entire bar of the country which is the principal purpose of the plan of the Association for a more representative organization.

He was followed by Mr. William A. Roberts, secretary of the Conference, who told something of the activities of the state and local groups and organization of Conference members in sections of the country he had recently visited. Mr. Paul Hannah of Washington, a member of the Council of the Conference, contributed to the discussion a concise statement of the advantages to be gained by membership in the Conference.

The final address of the meeting was given by Honorable D. Lawrence Groner of Washington, Circuit Judge of the United States Court of Appeals. Judge Groner spoke eloquently and with great conviction of the rights and liberties guaranteed by the Constitution, of their historical relation to the rights given seven hundred years ago by Magna Charta, and of the duty resting on the bar to see that they are protected and preserved.

"There are patriotic men," said Judge Groner, "who believe that national government should have complete authority in all cases in which in modern conditions such power is believed by congress to be necessary. There are others who believe the constitution should be amended to give the national government control of production and the relations of employer and employe. There are still others who believe it would be an unwise thing to congest any more power in that national government.

"The question," he added, "is of vital importance and should be examined and discussed before any step is taken to change the pattern of government under which we have lived 150 years."

Judge Groner received a unanimous vote of thanks for his stirring address.

The closing event of the meeting was a buffet luncheon at the beautiful Country Club of Virginia. There were no speeches, but Mr. Tunstall thanked the guests, and Mr. George M. Morris introduced, seconded and declared unanimously carried a resolution expressing appreciation to the hosts for "the best meeting of this kind which has ever been held."

The arrangements for the meeting were made by Mr. Robert B. Tunstall, Chairman, Mr. Thomas L. Preston of Richmond, Assistant Chairman and Treasurer, the following Vice-Chairmen, Charles Ruzicka, Baltimore, Md., George M. Morris, Washington, D. C., Stuart B. Campbell, Wytheville, Va., Douglas W. Brown, of Huntington, W. Va., Willis Smith, Raleigh, N. C. and Thomas M. Boulware of Barnwell, South Carolina, and the following committees:

Committee on Program

Thomas B. Gay, Chairman, Electric Bldg., Richmond, Va.; Harry H. Byrer, West Virginia; Walter M. Bastian, District of Columbia; Douglas McKay, South Carolina; Julius C. Smith, North Carolina; W. Conwell Smith, Maryland.

Committee on Finance

George E. Haw, Charman, Travelers Bldg., Richmond, Va.; Frank C. Haymond, West Virginia; Joseph L. Nettles, South Carolina; J. M. Broughton, North Carolina; George M. Morris, District of Columbia; Joseph F. Hall, Virginia; James H. Corbitt, Virginia.

Committee on Arrangements and Hospitality

John Randolph Tucker, Chairman, State-Planters Bank Bldg., Richmond, Va; Sherlock Bronson, James W. Gordon, Legh R. Page, Stuart G. Christian, William J. Parrish, Jr., Collins Denny, R. Grayson Dashiell, A. Sidney Buford, David H. Leake, J. Vaughan Gary, Eppa Hunton, IV, Sam B. Witt, Jr., P. Otey Miller.

Committee on Publicity

Guy B. Hazelgrove, Chairman, American Bank Bldg., Richmond, Va.; Alexander W. Parker, Robert G. Butcher.

Committee from the Junior Bar Conference

George D. Gibson, Chairman, Electric Bldg., Richmond, Va.; Henry Bane, North Carolina; Herbert M. Brune, Jr., Maryland; J. Horner Davis, II, West Virginia; Paul F. Hannah, District of Columbia; B. Allston Moore, South Carolina.

HISTORIC NEW ENGLAND SHRINES OF THE LAW
IV. Quincy and the Adamses*

By GEORGE R. FARNUM
Member of the Boston Bar; Former Assistant Attorney General of the United States

JOHN ADAMS *in* 1788
From a Painting By MATHER BROWN
Courtesy of Boston Athenaeum

JOHN QUINCY ADAMS *in* 1795
From a Painting By JOHN SINGLETON COPLEY
Courtesy of Museum of Fine Arts, Boston

In no other community in the Colony of Massachusetts was the love of independence more central than in the North Precinct of the old Town of Braintree, later set off and named Quincy. Nowhere else was the right of self-government more tenaciously held, and no other spot is more sacredly devoted to freedom by the sacrifices and cherished visions of its inhabitants.

WILSON, Where American Independence Began.

A frequent recurrence to the principles of the Constitution . . . [is] absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people . . . have a right to require of their lawgivers and magistrates an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of this Commonwealth.

Mass. Bill of Rights 1780 (Drafted by John Adams).

I have never sought public trust; but public trust has always sought me. And when invested with it I have given my whole soul to the performance of its duties.

JOHN QUINCY ADAMS.

In 1635 a strange band of rovers established their home by the shores of Massachusetts Bay, but a scant ten miles south of Boston. In curious contrast to their austere and repressed neighbors of both the Massachusetts Bay and Plymouth colonies, they were a carefree and, for that period, a roistering and demonstrative folk. Such conduct was not calculated to last in the heart of the land of Pilgrim and Puritan, and ultimately the redoubtable Captain Miles Standish marched upon them from the south and the censorious John Endicott descended upon them from the north, their leader, the notorious Thomas Morton, was promptly deported, and their conduct speedily brought into conformity with more orthodox standards. Shortly thereafter immigrants from England of a very different caliber refounded the settlement which was incorporated in the year 1640 as the town of Braintree.

Two score years later on the Plymouth Road, in the section which later became the town of Quincy, Joseph Adams, a descendant of an original settler, constructed what has been described as "a typical New England farmhouse, built of clapboards and brick, cov-

*This is the fourth of a series of articles on Historic New England Shrines of the Law, which are being written by Mr. George R. Farnum, of the Boston Bar. Members of the Association will find that these articles furnish an additional reason for visiting New England and attending one of the most significant meetings in the Association's history.

ered with shingles and widened by a lean-to, added as an afterthought," little thinking that, in the course of years, this little, unpretentious building was to become one of the cradles of American Independence. Fate decreed, however, that there was to be born here a grandson on October 19, 1735—a farmer's son who was to be educated for the ministry, though starting life as a schoolmaster, would vacillate between divinity, medicine and law to finally, by some curious vagary of destiny, choose the latter and thereby obtain the training and experience to play in the sequel a major part in the fashioning of a new nation. This man was John Adams. What crowded memories of bygone years this old house evokes—standing today substantially unchanged after two centuries and a half and preserved by the Daughters of the American Revolution as a national shrine. "The home in which Washington was born was destroyed by fire when he was three years of age. The frail cabin in which Lincoln first saw the light soon crumbled to dust. But here stands the veritable roof-tree under which was ushered into being the earliest and strongest advocate of independence—the leader whose clear intelligence was paramount in shaping our free institutions, the founder of a line of statesmen, legislators, diplomats, historians, whose patriotism is a passion and whose integrity is like the granite of their native hills."[1]

Starting upon the law he inscribed in his diary as the cardinal article of his faith, "The study and practice of the law, I am sure, does not dissolve the obligations of morality or of religion. . . . I set out with firm resolutions, I think, never to commit any meanness or injustice in the practice of the law." To this commitment he adhered throughout his life. In 1758, at Boston, he was admitted to the bar of the Province and entered upon active practice. As a young practitioner he heard James Otis argue against the Writs of Assistance and his notes constitute the only report we have of that memorable address. Among the dramatic cases that arose out of the pre-revolutionary agitation of the time were two that brought him no small measure of prominence. He defended the friend of his boyhood, John Hancock, then a wealthy Boston merchant, on the charge of "bootlegging" a cargo of wine from Madeira, and appeared for Captain Preston, who commanded the British troops at the Boston Massacre. This last case, and those of other participants in that tragic prologue to revolt, he later characterized, with perhaps a touch of exaggeration, as "trials as important in the history of mankind as any that are recorded in the history of jurisprudence." In the year that the battles of Lexington and Bunker Hill were fought he was appointed Chief Justice of the Superior Court of Massachusetts. A year and a half later he resigned, never having sat upon a cause. From then on his life for many years was exclusively dedicated to the service of his fellow citizens.

A man of tough Puritan fibre, great moral courage and tenacity of purpose, endowed with what has been characterized as a Miltonic self-sufficiency of mind, and the undoubted intellectual superior of most men of his time—though he was sadly lacking in the qualities which make for popularity—he soon became a leader in the colonial revolt and the achievement of American Independence. He was the "Colossus," as Jefferson called him, of the Continental Congress—the "Atlas of Independence" in the words of Stockton of Virginia. The appointment of Washington as Commander-in-Chief of the American forces, so fraught with tremendous consequences to the cause of liberty, has been attributed to his influence. He seconded the epic resolution, "That these United Colonies are, and of right ought to be, free and independent states." He opened the debate on the adoption of the Declaration with a speech that Jefferson declared evinced a "power of thought and expression which moved the members from their seats." He had previously served on the committee that framed it. Writing years later (1822) to Colonel Timothy Pickering, he recalled the following incident. "The subcommittee met. Jefferson proposed to me to make the draft. I said 'I will not.' 'You should do it.' 'Oh, no.' 'Why will you not? You ought to do it.' 'I will not.' 'Why?' 'Reasons enough.' 'What can be your reasons?' 'Reason first—you are a Virginian and a Virginian ought to appear at the head of this business. Reason second—I am obnoxious, suspected and unpopular. You are very much otherwise. Reason third—You can write ten times better than I can.' 'Well,' said Jefferson, 'if you are decided, I will do as well as I can.' 'Very well, when you have drawn it up, we will have a meeting.' " Though Adams further records his dissatisfaction with certain features of the draft, among other reasons because he "thought the expressions too passionate and too much like scolding, for so grave and solemn a document," it was duly reported by the committee to the Congress, which, he asserted, "cut off about a quarter of it, as I expected they would," adding, "but they obliterated some of the best of it, and left all that was exceptionable, if anything in it was."

As diplomat, he served on the special war commission to France, obtained vital financial resources from Holland, headed the mission which negotiated peace and served in the difficult post of first Minister to Great Britain. In the first presidential election, receiving the second highest number of electoral votes, under the then rule he became Vice President. He served throughout Washington's two terms and staunchly committed to Federalist policies, succeeded him in the presidency. The story of the harassments to which the difficult problems of the times subjected him, intensified by the peculiarities of his own temperament, the disloyalty of certain members of his predecessor's Cabinet whom he had retained, the rivalry of Jefferson and the animosity of Hamilton have been often retold. Regardless of the effect upon his own political fortunes, he was steadfast in his purpose to discharge his duty at all times as he saw it. It will suffice to here recall those words he uttered in his address to Congress, after the insulting and humiliating treatment of the envoys Marshall, Pinckney and Dana by France. "I will not send another minister to France without assurances that he will be received, respected, and honored as the representative of a great, free, powerful and independent nation." Shortly before the expiration of his administration, in his appointment of Marshall, whom he had previously selected as Secretary of State, as Chief Justice of the Supreme Court, in the words of James Truslow Adams, "he gave, for centuries following, the fundamental law to [the] nation." In 1800 the people whom he had served so well and for so long denied him a re-election, and the House of Representatives, resolving the tie between Thomas Jefferson and Aaron Burr, elected the former as President.

From the chagrin of his defeat he returned to his native Quincy, establishing himself in a roomy man-

1. Wilson, Where American Independence Began.

sion built in 1731 and owned before its confiscation by a Tory West Indian planter and which he named Peacefield, "in commemoration" as he put it "of the peace I assisted in making in 1783." Here he passed the last years of his life, a keen but philosophical observer of the development of those institutions which he had done so much to create, receiving many a visitor from far and near—including Lafayette after a separation of forty years—and carrying on that correspondence with Jefferson which was the friendly epilogue to years of rivalry. The house is still standing and is open to the public. It was a dramatic and curious coincidence that he died on July 4, 1826, on the fiftieth anniversary of the adoption of the Declaration of Independence. It was an added coincidence that Jefferson expired on the same day. Thus passed on this memorable anniversary the last two surviving signatories. The previous month, in declining by reason of feebleness an invitation of his fellow citizens to participate in the holiday program, he had written dispassionately of that half century of American independence as "a memorable epoch in the annals of the human race; destined to the use or the abuse of those political institutions by which they shall, in time to come, be shaped by the human mind." He was laid at rest in the crypt of the First Church beside that companion who had shared his great career for well over fifty years and who had preceded him there by eight years. Twenty-two years later he was joined by his oldest son, who in his public life had followed so closely in his footsteps. This old shrine, more popularly known as the "Church of the Presidents," was built in 1828, from the granite for which the town has long been famous. Incidentally, from these same quarries came the material that built King's Chapel in Boston and Bunker Hill Monument. For the monument the granite was transported from the Quincy hills to tidewater over America's first railway transportation line, constructed in 1826 and operated by horse power. The road bed with some of the original equipment and rolling stock may still be seen.

Beside the birthplace of John Adams there still stands another old Colonial farmhouse constructed in 1760. It was here that John Adams and his wife Abigail, daughter of Parson Smith and recently styled "the most remarkable woman in North America," established their home immediately following their marriage in 1764. Here on July 11, 1767, was born their son John Quincy Adams, characterized as "America's completest realization of Puritanism in its strength." Destiny marked him from birth for a great public career. Most happy was he in his heredity and most fortunate in the extraordinary educational advantages afforded him both at home and abroad. As an impressionable boy he lived through the days of the Revolution. When an old man he recalled in a public address the following event which had occurred sixty-eight years before. "In the year 1775 the minute men from a hundred towns were marching to the scene of war. Many of them called at my father's house at Quincy and received hospitality. They were lodged in the house and barns wherever they could find a place. There were then in my father's kitchen some dozen or two pewter spoons, and I well recollect going into the kitchen and seeing some of the men engaged in running those spoons into bullets for the use of the troops. Do you wonder that a boy of seven years of age who witnessed this scene should be a patriot?" In the same year, with his mother, he watched from a nearby hill the smoke of burning Charlestown while listening to the

CHURCH of PRESIDENTS, IN WHICH BOTH JOHN ADAMS AND JOHN QUINCY ADAMS ARE BURIED. QUINCY, MASS.

"PEACEFIELD", HOME OF JOHN ADAMS DURING HIS LAST YEARS AND OCCUPIED BY SUCCESSIVE GENERATIONS OF ADAMS FAMILY UNTIL 1927, QUINCY, MASS.

ABIGAIL ADAMS CAIRN, QUINCY, MASS.

BIRTH PLACES OF JOHN QUINCY ADAMS AND JOHN ADAMS, QUINCY, MASS.

guns from the battle of Bunker Hill. The spot is marked by a monument of stones known as Abigail Adams Cairn.

He came to maturity during the early days of American Independence, exceptionally qualified to understand the events of that early period when our new political institutions were being tested and developed. Though trained for the Bar, he never applied himself with any continuity to the achievement of a professional success, though years afterwards, while serving his country across the sea, he received word of his nomination and confirmation as Justice of the United States Supreme Court, a position which he immediately declined to accept. Two years after his father's defeat for re-election he took his seat in the Massachusetts Senate, from which he went shortly to the Senate of the nation. From the latter office he ultimately resigned, declining to compromise with his political principles. Then followed years of diplomatic service abroad from which he returned to become Secretary of State under Monroe. In this post he served through the difficult period which followed the War of 1812. The Monroe Doctrine undoubtedly owes its conception to his acute and farseeing statesmanship. In 1825 he was elected the sixth President of the United States. Four years later history repeated itself in the Adams family and he was defeated for re-election, being succeeded by Andrew Jackson. It is a melancholy commentary on our democracy that these two men, father and son, than whom none was better qualified to represent or had better served his fellow citizens, were both denied a vote of confidence—the only Presidents up to that time who so fared at the hands of the people. Unlike his father, however, he did not accept this frustration as the epilogue to his public career, but returned to the nation's Capital, not as its first citizen but as a humble Congressman. For seventeen years, friendless and reviled, and representing an order of things that was fast passing away in American public life, but sustained by his faith in God, his devotion to duty and his unconquerable spirit, he fought one of the most courageous and dramatic battles for the attainment of his ideal commonwealth in the entire history of parliamentary government. He died, as befitted him, in the harness. He was stricken at his Congressional desk and two days later the curtain fell on his great career. His last words were, "This is the last of earth. I am content."

Though Rufus Choate was inspired by the political emotions of a bitter campaign to declare that John Quincy Adams was "the last of the Adamses," there was at least one other among his influential descendants who measured up to the full traditional stature—his son Charles Francis Adams, born in 1807, and coming to maturity at a time when, in the words of James Truslow Adams, "the Puritan God [had] evaporated, leaving only the New England conscience." He, too, was a lawyer, who had studied in the office of Daniel Webster at Boston. His great service to his country, however, was in the field of diplomacy, his assignment one of the most difficult and critical ever undertaken by one of our foreign envoys—the ministership to Great Britain during the Civil War. "None of our generals in the field, not even Grant himself," asserted James Russell Lowell, "did us better or more trying service than he in his forlorn outpost of London." Perhaps the climax of those harassing years was his culminating protest to Lord Russell against the vacillation of English policy in dealing with the Confederate emissaries and conniving at grave breaches of neutrality, when, to prevent at all hazards the release of the ironclads built for the Confederacy and designed to break the Union blockade, he staked all on the direct accusation that "It would be superfluous in me to point out to your lordship that this is war." But this bold manoeuvre won the day—and who shall say to what extent it did not contribute to win the war as well? Some years later he had the satisfaction, while sitting as arbitrator for the United States in the adjustment of the Alabama claims, of seeing justice done his country for the wrongs permitted, even unto the last farthing. With these labors his public career ended. Declining the presidency of Harvard University, his last years were occupied in editing the publication in twelve volumes of the priceless Diary of his father—a diary which it has been asserted "was by all odds the most important in American history." Upon the completion of this task he wrote, "I am now perfectly willing to go myself. My mission is ended, and I may rest." Nine years later this wish was fulfilled. He died in Boston in 1886.

Years ago Carlyle, who diagnosed with such an unerring instinct the social maladies of his day wrote: "Cannot one discern, across all democratic turbulence, clattering of ballot boxes and infinite sorrowful jangle, that this is at bottom the wish and prayer of all human hearts everywhere, give us a leader." In its early days America found in its lawyer-patriots and lawyer-statesmen that wise, devoted and disinterested leadership that the times exacted. In more recent years the uneasy conviction has been rapidly gaining ground that good men are eschewing public life and that democracy in the end will be discredited. But the hope is not dead that what has been styled the "well taught, well nurtured America of J. Q. Adams's dream"—that "of a free people wisely governing themselves, and advancing, generation by generation, in comfort and intellectual and spiritual welfare"—may yet be realized. The faith still persists that the legal profession, true to its traditions, will yet produce the leadership which modern America requires to make that dream an approximate reality.

Recent Changes in Bar Admission Requirements

(*Continued from page* 305)

had graduated from an accredited law school or a "correspondence law college" having a two year course, should be entitled to take the bar examination.

A somewhat similar bill was passed last year in New Mexico. By enactment of the legislature the board of bar examiners in that state was directed to recommend to the supreme court for admission on motion citizens who have resided in the state of New Mexico for more than twenty years, studied law for more than three years, practiced before one or more of the United States Land Offices and the General Land Office of the Department of the Interior twenty years or more, when he shall be vouched for by six reputable lawyers in good standing. The one applicant who filed under the provisions of this law was refused recommendation by the board of bar examiners and did not carry this matter to the supreme court. This type of legislation is obviously so unsound that comment concerning it is superfluous. The constitutionality of the bills is undoubtedly subject to attack on the ground of their interference with the inherent power of the court over admissions to the bar.

COURTS AND THE CHANGING INDUSTRIAL SCENE
—WITH SPECIAL REFERENCE TO THE OIL INDUSTRY

Proper Approach to the Subject Requires a Brief Consideration of the Modern View of the Relationship between Law and Society—Law as Social Control—The Nature of Our Judicial System—Courts and Society—Law and the Oil Industry—A Social-Minded Attitude on the Part of Industry and Legislators, and a Realistic Approach to Problems by the Courts, Should bring a Solution in the Light of American Traditions and Ideals of Fair Play*

By Hon. Leon R. Yankwich, J.D., LL.D.
United States Judge for the Southern District of California

THE proper approach to a discussion of the relation between law and the changing industrial scene calls for a preliminary statement of the nature of law and of our judicial system. This is the more important because social students are departing from the older views as to their nature. This departure is unknown not only to the laity, but also to many of our own profession. Many lawyers still look upon law as an absolute set of principles so perfect in scope as to tolerate no modification. To them all that courts have to do is to take these eternal principles and apply them to concrete situations and justice would be the result. So, at the risk of being elementary, let me state briefly the modern view of the relationship between law and society.

I—Law as Social Control

Ever since the dawn of civilization man has tried to establish instrumentalities for the peaceful settlement of controversies between the members of the community or of the conflict between members of the community and the community as a whole. In the earliest social organizations the aim is attained through the intervention of either the chieftains or the religious leaders of groups, who are the repositories of the sane thought and of the rules and regulations which the community seeks to maintain. Some have called these primitive regulations "customs" and have refused to give them the name of "law." However, in its own community, social custom may, in its effect, form as strong an element of unity and have as strong a coercive effect as the more complex law of the more advanced communities. As society develops, the legal function acquires separate being. Separate institutions appear, the chief function of which is to administer the body of regulations which a particular community calls its law. Law thus comes into being as a distinct rule of human conduct which a community seeks to enforce through its coercive power.

While, ordinarily, when we speak of the code of laws, we refer to the code which the State enforces, there are many other codes, which are given the force of law within a small group. All codes arise out of human needs and human relationships. As we study the history of mankind and the rise of legal institutions, we come to understand law—not, as the older legal writers understood it—a rule of human action prescribed by some superior which the inferior was bound to obey—but as one of the methods of social control. A well-known legal philosopher, Dean Roscoe Pound of Harvard Law School, has defined law as

"Social control through the systematic application of the force of politically organized society."

Another definition is that of Mr. Justice Holmes:

"Law is a statement of the circumstances in which the public force will be brought to bear upon men through the courts." (*American Banana Co. v. United Fruit Co.* 213 *U. S.* 347 (1909).

What gives strength to law, is the fact that, through it, is expressed the desire of the community to regulate and control certain activities and relations.

II—The Nature of Our Judicial System

A court, according to a classic legal definition, is a place where justice is administered *judicially*. That is, not according to some abstract ideas of right and justice, but according to the rules laid down by society in the code to which it gives the sanction of its force. The justice of the oriental cadi, a justice dependent wholly upon the whim of him who administers it, is not the justice of American courts. The most important principle which governs the administration of justice in the courts of law of the United States is the principle of the supremacy of the law. This is the principle expressed in the old legal saying:

"The law is the highest inheritance which the king has, for by law he and all his subjects are governed and if there were no law, there would be no king and no inheritance."

John Adams stated it in his peroration for the Bill of Rights of the Massachusetts Constitution, Article XXX: "To the end it may be *a government of laws* and not of men."

Under this system, the protection of life, liberty and property is not left to the whim or caprice of an individual. It is governed by rules of law applicable to all. Judges are the guardians of the rule of law. Law, under this conception, becomes the common yardstick by which the relation of one citizen towards the other and the relation of all towards the commonwealth is measured.

Applied to courts, the principle means that no one is above the law, and that no person can be deprived of his rights except by due process of law, i.e., after the lawful judgment of a court duly and regularly estab-

*Address delivered before the Pacific Coast Regional Conference of the American Petroleum Institute at Los Angeles on April 14, 1936.

lished. It has been said that the chief aim of the modern state is "to uphold the rule of law."

In a sense what law is, is ultimately, determined by the judicial branch of the government. In final analysis, therefore, judges are our legislators. This is particularly true in the United States where, through the power of courts to declare laws unconstitutional, the protection of the citizens against legislative arbitrariness is in the hands of courts.

As a part of the power of courts to interpret and apply the law to the questions presented to them, they may refuse to sanction as law any enactment which conflicts with the fundamental law of the land—the Constitution. But even in applying well established principles of law to particular cases, judges do legislate. Under the stress of social change, judges take old precepts and principles and adapt them to new conditions. New Law thus arises. An English historian has remarked that notwithstanding the seeming changes made by legislatures "their work will become an organic part of an already existing system." Stressing the continuity of English law, the same historian adds that "eventful though its life may have been, it has had but a single life." Judicial decisions for seven hundred years give to it that continuity. Law thus becomes a part of life. In a changing world—in a world in flux—it also is in flux. Law, instead of being a fixed, static thing, becomes a living, changeable entity, aiming to satisfy the changing needs of human society. It thus becomes what Dean Roscoe Pound calls "a continually more efficacious social engineering." Law grows with the life about it. In true pragmatic spirit, it grows out of repeated trials and errors. It thus becomes an instrument of social man for achieving and advancing social control, growth and development.

III—COURTS AND SOCIETY

The importance of the judiciary arises from the power which is theirs by reason of the social nature of law. In the formulation of new law by judges and in the determination of actual controversies, several elements enter. According to modern students of the judicial process (like Roscoe Pound) we first have a body of precepts inherited from the common law. They form the great corpus of unwritten law. They have a binding force upon us because our system is a continuation of the English legal system and also because by legislative mandate in most states it is distinctly provided that the common law of England shall be the law unless otherwise provided. Another element in the judicial process is the technique of the lawyer in applying these principles. Finally comes the social philosophy of the judge in the light of which the old precepts are, consciously or unconsciously, modified as the need for adapting them to concrete cases and new conditions demands. Some modern codes have taken this last element into consideration by providing, as does the Swiss Civil Code, that the judgment of the court should be subordinated to the "primordial necessity of order in the social life." Mr. Justice Cardozo has stated this thought in the following language:

"There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense of James' phrase of the 'total push and pressure of the cosmos,' which, when reasons are nicely balanced, must determine where choice shall fall. In this mental background every problem finds its setting. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own. To that test they are all brought—a form of pleading or an act of parliament, the wrongs of paupers or the rights of princes, a village ordinance or a nation's charter." (*The Nature of The Judicial Process, p.* 12.)

If judges are to perform their function properly in a government such as ours—where, through the principle of judicial supremacy, i.e., through the power of courts to nullify legislative acts they become arbiters of social policy, they must, in the language of Zachariah Chafee, understand "human life as well as embalmed legal experience."

This calls for a knowledge of the society to the relations of which they are called to apply legal principles, old and new. A legal scholar has stated:

"Legal relations are made of the behavior of the societal group toward individuals, usually through societal agents. The description of legal relations is the description of that behavior. This is the content of the science of analytical jurisprudence. But the science of functional jurisprudence also includes the study of what these legal relations, i.e., societal group behavior, should be in order to accomplish the social ends of the societal group. The behavioristic science of economics, dealing with the scarcity of human resources, has to be studied with reference to societal group behavior to determine how by employing the group behavior factor, actively or passively, together with the scarcity factor, each factor being complementary to the other and sometimes one and sometimes the other being available as the limiting factor, the ends desired may be brought about. Those ends themselves very often are economic ends, i.e., consequences with reference to scarcity. *Law, as an instrument of group ends, involves economics as to the content of its ends and as a factor of control in their accomplishment.*" (20 *California Law Review* (1932), 394-395). (Italics added.)

The complaints, which at various times, have been directed by labor, industrial and business groups at courts have been grounded chiefly upon the claim that they had failed to consider realistically the social changes and to take them into consideration in determining particular questions.

These complaints have not been limited to one group.

Labor has complained about the failure of courts to sustain state interference in their behalf in the relationship between employer and employe, and about the unwarranted extension of the injunctive process. The employer group has complained about the limitations which courts have placed upon the modern means of transacting business, such as the limitations placed upon the law of partnership and the more serious limitation placed upon the corporate entity so far as state lines are concerned. It is not my object to discuss them here. I merely point to the fact that dissatisfaction has been voiced.

The source of it lay in the fact that the judgments of courts were, in many cases, dominated by out-moded ideas of social ends which unconsciously colored them. Courts did not seem to be aware that the industrial scene was changing. They conceived the social relationships around them in the manner of the 18th century Manchester school of economics. This school conceived economic life to consist of individual units which held within themselves the seeds of harmony and social good. Social wisdom required, therefore, that society interfere as little as possible with the free interplay of these units. There was, thus, born the political doctrine of *laissez-faire*. However, in reality, through the in-

tegration of economic units into large and powerful groups, a different scene appeared. The unrestrained competitive picture was replaced by a picture of interrelated and interdependent units. Unrestrained competition was followed by cooperation. *Laissez-faire* was followed by greater societal control in the field of economics. Behind the state's intervention as it expressed itself in laws regulating the hours of labor of children, of women and of men engaged in dangerous employments, in factory inspection acts, in employers' liability acts, and, in other countries—in various schemes of unemployment insurance, lay a new doctrine of social responsibility. This doctrine sought to translate into legislative terms the interrelation and interdependence existing not only between the various elements which constitute our industrial and economic life, but also between the individual and the community. One of our local sociologists, Dr. Clarence Marsh Case, of the University of Southern California, has thus expressed the factual basis from which the doctrine of social solidarity arises:

"The present writer has gone one step farther and maintained that the same inescapable community is present in the narrower cultural process which is called economic production, and renders the casuistical discussions of the Manchester school of economics with respect to the 'economic distribution' of shares to the 'factors' of production, namely land, labor, capital and enterprise, a highly academic exercise. The classical theory, gratuitously assuming that economic processes are part of the order of nature, whereas they are essentially human and social evaluations, has been accustomed to regard its explanation of these social arrangements and appreciations as a statement of inevitable natural laws, more especially of the biological law of natural selection. The basic consideration referred to above renders this merely a systematic rationalization. I refer to the fact that in actual life it is impossible to tell just how much any economic factor, or even any single person representing any single factor, contributes to the total product of the industrial organization. A man's contribution as rent receiver, wage earner, interest taker, or profit-and-loss claimant, is not limited to that particular role. *Simply as a consumer, a borrower, law-abiding citizen, a member of society, he constantly makes further contributions to economic production in forms that cannot be parcelled out and measured or evaluated specifically, by any natural law of wages, 'iron' or otherwise. He is simply a part of the whole of us who carry on together the productive-consumptive process, which is essentially a collective process, and never in any instance an individual process. The corollary is that the total national product is the output of the whole nation, of the total situation (configuration, Gestalt) and belongs to the people as a whole. No individual is more, or less, than a trustee with respect to any part of it.*" (19 *Sociology and Social Research*, (1935) *pages* 214-215.) (*Italics added.*)

We were slower in the United States in recognizing this new responsibility than were other civilized countries such as England, where the doctrine of non-intervention began to be abandoned early in the 19th century. France and Germany. Many factors explain that. We had a vast, rich continent offering an opportunity for individual improvement by a change of habitat. We had great resources. The frontier encouraged the extreme individualism which characterized our life during practically the whole of the 19th century. But with the disappearance of the frontier, with the change of the United States from a rural to an urban nation, we began to realize that many of the inequalities and injustices which had called for legislative intervention in other industrial countries called for similar action upon our part. Then our legal difficulties began. In many instances when legislators gave recognition to this changing scene, the laws met defeat at the hands of judges who read into their interpretation of constitutional due process, their *laissez-faire* philosophy. Laws were denied approval not because any direct provision in the Constitution of the nation or of the various states stood in the way, but because the ideas of certain judges as to the proper sphere of governmental activity had not undergone change.

So it became necessary for Mr. Justice Oliver Wendell Holmes to remind his associates upon the Supreme Court of the United States,—when they refused to give constitutional sanction to a New York law limiting the hours of labor for bakers,—that:

"The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statistics."

Under the impact of the world-wide economic crisis, we have departed rapidly from the doctrine of individualism. In the interest of the common good, it is becoming evident that the state cannot maintain its position as a mere policeman, but must participate more actively in the economic life, in order to equalize opportunities, and remove the inequalities and injustices which arise from the exercise of economic power. Greater and greater socialization of functions is taking place, which calls for the subordination of abstract rights of property and contract to social welfare.

IV—Law and the Oil Industry

Perhaps no industry has been made to feel this changing attitude so much as the oil industry. I venture to say that the industry has been subjected to greater regulation than any other excepting, perhaps, public utilities. In more recent years it has protested interference less than other industries. This situation is traceable to the fact that the oil industry is dealing with a natural resource. Because of this and because oil is a product so essential to the conduct of our mechanized civilization, courts, have sustained the greater legislative control to which the oil industry has been subjected. The basis for sustaining this legislative control is the fundamental one that the State has an interest in its natural resources, which justifies legislation to prevent unlimited exploitation or waste by the owners of the land on which they are found. Action by state governments was sustained by extending the police power to these regulatory measures. When reasonable in their scope they have withstood all attack based upon alleged violations of the due process and equal protection of law clause of the Constitution or of the prohibition against the taking of property without just compensation. The regulations are too numerous to be discussed. But it may be stated generally that courts have sustained measures aimed to conserve oil and gas, to prevent waste, overproduction and competitive drilling, which are the chief ills from which the industry has suffered. (*Ohio Oil Company v. Indiana*, (1900) 177 *U. S.* 190; *People ex. rel. Stevenot v. Associated Oil Company*, (1930) 211 *Cal.* 93; *Bandini Petroleum Company v. Superior Court*, (1931) 284 *U. S.* 8; *Champlin Refining Company v. Corporation Commission*, (1932) 286 *U. S.* 210).

The industry itself through voluntary prorationing and through the system of unit operation has furnished a laudable example for other industries. Realizing that they are dealing with a natural resource in the preservation of which others have an interest, they have sought to introduce some order by voluntary action and substituted it for the chaos which, at times, has characterized oil production. Courts called upon to sustain such voluntary actions when attacked by per-

sons interested in obtaining the utmost exploitation at a given time, have not overlooked the economic factors. An interesting problem came before me some years ago, while on the state bench. The owner of a prospecting permit sought to compel the operator to operate the lease to maximum capacity despite an agreement between the operators in the field calling for curtailment and prorationing. The lease called for diligent operation, after discovery. As the law allows great latitude in determining what diligence of operation is, I held that low prices for the product may justify the failure to carry on production to maximum capacity involved in voluntary prorationing. I said in the opinion:

"If the law, in determining diligence, may take into consideration what we have called *the individual* (or local) economic problem—conditions *generally* applicable to an industry *may be* given like effect. If the absence of a pipe line into a territory which makes it unprofitable to operate a well, excuses cessation of operations, a general condition of over-production of oil, in the whole state and nation, which, if indulged in, would result in the demoralization of the market and, consequently, in loss to the lessor as well as the lessee, should receive as much consideration. To say, as do counsel for the defendants, that such a condition does not prove the inability to market the oil out of these particular wells, is to disregard the world we live in. We cannot consider the oil produced from these wells as the sole oil which is available for sale —or the field as the sole field which produces it. Oil is an international product. The local market is influenced by other state and national markets. The law of supply and demand governs it. And a general condition of oversupply of a commodity may justify a curtailment of production and be as indicative of what *Summers* calls the actions of 'an ordinary prudent person, experienced in the business of production of oil and gas,' as the transportation difficulties of a man operating in a distant field. This is the more true when such curtailment, after discovery of oil, entails a greater loss to the lessee than to the lessor." (*Texas Company v. Vedder, No.* 311832, *March* 7, 1931).

What of the future? As the trend is towards greater social control, the oil industry will, in common with others, participate in that tendency. If you are opposed to that general governmental tendency, you must, however, make up your mind that you will have to accept it in your industry, because of the nature of oil as a natural resource and the increasing demands for its conservation. Bear in mind the fact that the English-speaking world is the only one in which absolute private ownership of minerals including oil is allowed. This is in accordance with an old common law principle by which the rights of the owner of land extend upwards to the sky and downwards to the very bowels of the earth. In Latin countries mines are part of the public domain even when found upon private property. And generally it is their tendency to nationalize petroleum resources. In Mexico, the Constitution of 1917, Article 27, Paragraph 24, provides:

"In the Nation is vested the legal ownership of all minerals or substances which in veins, layers, masses, or beds constitute deposits whose nature is different from the components of the land . . . petroleum and all hydrocarbons—solid, liquid or gaseous."

This is the rule in practically all South American countries. They all declare the ownership of the state in petroleum products and allow leasing or exploitation under strict governmental regulations only. As against this, under our American system, private ownership is allowed subject to regulation of the type indicated, grounded upon the superior rights of others and of the right of the community as a whole to prevent waste and destruction of a natural resource which is almost indispensable in our modern economy.

These principles lie at the basis of all governmental control of the oil industry. Any speculations as to the future must take these facts into consideration. The Federal Oil Conservation Board in one of its reports, issued in October, 1932, has stated clearly, I think, the basis for future regulation:

"This country's legislation has proceeded upon a policy of prohibiting monopolies, but has rejected control of the oil industry as a public utility. The middle ground, which is exercise of the police power to prevent waste, cannot be occupied by the Federal Government because it possesses no such power, nor by any State alone because its power stops at its borders. The Constitution authorizes interstate compacts as a method for coordinating the necessary forces, in such a case, and the oil industry presents an opportunity for exercise of that method with particular effectiveness."

The problems of the industry will not be solved until a comprehensive system of federal regulation is devised. A narrow view of the interstate commerce clause may stand in the way. But if we take the view that the flow of petroleum from its natural bed to the consumer constitutes a single act and bear in mind the fact that 90 per cent of it moves across state lines, we may have a foundation for constitutional federal regulation of the industry. Neither the decision in the N. R. A. case (*Schecter Poultry Corp. v. United States* (1935) 295 *U. S.* 495) nor the decision in the "hot oil" case (*Panama Refining Company v. Ryan* (1935) 293 *U. S.* 388) are insuperable obstacles. Perhaps some of these days courts will adopt the view of interstate commerce expressed in one of the railroad rate cases (*Wisconsin v. C. B. & Q. R. R.* (1922) 257 *U. S.* 564):

"Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso." (*Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.* (1922) 257 *U. S.* 563, 588.)

Prediction is difficult. Yet, in studying the trends in our life, in studying the relation between governmental authority and the oil industry in the past, I am confident that a social-minded attitude upon the part of the industry towards its problems, a like attitude upon the part of the legislators, both state and national, from whom future control must come, and a realistic approach to any problem which future legislation may present upon the part of the courts, will bring a solution of the problems of this industry, as of all other industries, in the light of American traditions and American ideals of fair play. If, in achieving this result, you or any other industry may be called upon to subordinate private gain to societal needs, it is well to remember that this is the most dominant trend in our whole life. And the Supreme Court of the United States (in *Nebbia v. New York*, (1934) 291 *U. S.* 502), has postulated as American governmental and constitutional doctrine the principle that no one should use his property in a manner to harm his fellows. If we realize the import of these facts, we need have no great concern or fear for the future.

COMMISSIONERS ON INTERSTATE COOPERATION HOLD SECOND GENERAL ASSEMBLY

Meeting at Chicago Confirms View that Broad National Problems Involving Jurisdictions of Individual States Can Be Solved through Federal-State Cooperative Means—Regional Problems Involving Two or More States With Similar Conditions Require Regional Administration—Action Taken at Meeting—History of Movement to Date

By Henry W. Toll
Executive Director, the Council of State Governments

ON January 21, 1935, Senator Joseph G. Wolber introduced Senate Joint Resolution No. 3 into the New Jersey Senate. This resolution proposed the establishment of a commission "whose function it shall be to perfect the participation of this state in the Council of State Governments, for the purpose of establishing and maintaining governmental machinery to facilitate communication, negotiation, understanding, and cooperation between the State of New Jersey and other states of the Union, both regionally and nationally."

It is significant that the state of New Jersey should take the first step in the development of permanent harmonious and cooperative policies among the states—an objective set long before by the Council of State Governments and one upon which its staff had earnestly worked.

The significance of New Jersey's lead lay in two facts: that in 1787 fifty-five delegates from twelve states, gathering at Philadelphia in order to frame a constitution which would unite the states, were influenced in their action by "The New Jersey Plan" which championed the cause of "states' rights"; and that New Jersey was faced, perhaps much more than the majority of the states, with the urgent need for creation of some machinery whereby harmony and cooperation among the states could be established. Within its boundaries lies a large part of the New York metropolitan area. In Trenton and in Albany lawmakers are aware that business interests frequently threaten to cross the boundary—sometimes eastward, sometimes westward—to avoid state taxation. These lawmakers know, too, that liquor control and crime prevention have been complicated by both the Hudson and Delaware Rivers.

While the New Jersey legislature was studying the Wolber resolution, the Second Interstate Assembly, called by the American Legislators' Association, adopted a resolution recommending that "appropriate agencies on interstate cooperation be formed in each state," and "that this recommendation be communicated to the legislature of each of the several states." Less than two weeks after the Second Interstate Assembly had concluded its sessions, the Wolber resolution had been passed by both houses of the New Jersey Legislature, and Governor Harold G. Hoffman, in signing it, had said: "I am proud that New Jersey has taken the initiative in connection with this important subject." Members of this new Commission on Interstate Cooperation were named immediately so that they could begin, again quoting Governor Hoffman, "an intensive study of compacts on taxation and crime prevention."

Three months after New Jersey had set up the first Commission on Interstate Cooperation—June 15, 16 and 17, to be exact—the Council of State Governments gathered together in Chicago official representatives of 22 states to take stock of progress and to inquire into ways and means of accelerating creation of these new permanent implements of interstate harmony. At this first assembly it was found that seven states had established state Commissions on Interstate Cooperation, following the New Jersey formula: five members from the senate, five from the house, and five executive appointees. It was also found that ten states had standing legislative committees on interstate cooperation representing one or both houses.

Now, ten months after the first meeting of these commissioners, who broke up to return to their several state legislatures with the firm assurance that cooperative machinery for solution of interstate problems was rapidly developing, we have just concluded the three-day session of the Second General Assembly of Commissioners on Interstate Cooperation.

There are now fifteen states with permanent agencies for the discussion, and ultimate solution, of interstate problems—fifteen states with Commissions on Interstate Cooperation. They are Alabama, Colorado, Florida, Indiana, Kentucky, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and Virginia. Eleven states have standing committees on interstate cooperation representing either one or both legislative branches: Arizona, Arkansas, Georgia, Idaho, New Mexico, Oregon, Tennessee, Texas, Washington, West Virginia and Wyoming. In addition, the subcommittee on interstate cooperation of the Michigan Legislative Council is a participating agency.

It is worth while noting that six of the fifteen permanent Commissions on Interstate Cooperation have been established in 1936—an off-legislative year, when special sessions were called primarily for the single purpose of enacting legislation to meet the requirements of the Federal Social Security Act.

The Second General Assembly of Commissioners on Interstate Cooperation, held in Chicago April 17, 18 and 19, brought together about 100

official representatives from 28 states. The roll-call of states brought answers from Arkansas, Arizona, California, Colorado, Florida, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin and Wyoming. Not only did these men, representing both legislative and administrative branches of state government, present and discuss their special problems needing interstate action, but they listened to the federal point of view toward state and regional problems as presented by the four members of the National Resources Committee.

It is important here to stress the fact that a great amount of discussion and personal interchange must precede the formulation of any set program of interstate action. What program is formulated must rest upon a thorough understanding of what the problems are. Reciprocal legislation or compact agreements relating to industrial labor may be the most urgent interstate needs in the eastern states. Oil production may be the most urgent in the Southwest. Flood control may be the pressing problem of the middle western states. Liquor producing states may find that production taxes need interstate adjustment. Tobacco states will naturally gravitate together. All states have problems of nationwide interest. Social security is one of them. Crime control is another.

At the first assembly of Commissioners on Interstate Cooperation held ten months ago, these interstate problems had not clearly identified themselves with groups of states. New York, New Jersey and Pennsylvania had, however, been confronted for years with difficulties upon which interstate policies had to be determined. Crime prevention and control seemed to be the logical starting point.

Accordingly, the New Jersey Commission on Interstate Cooperation called a nation-wide crime conference. With the aid of the Council of State Governments it was held in Trenton on October 12, 1935. To this conference came representatives from almost 40 of the 48 states—legislators, attorneys-general, state police chiefs, authorities on criminal law, and public officials and others interested in the crime situation. As the result of that conference a permanent Interstate Commission on Crime was organized. An executive committee composed of the attorneys-general of Illinois, New York, Kansas and Utah, a state senator from Florida, the executive director of the Council of State Governments and Judge Richard Hartshorne, Chairman of the New Jersey Commission on Interstate Cooperation, was appointed. Judge Hartshorne was made chairman of the crime commission.

The Interstate Commission on Crime started to work immediately. Not only did it agree upon certain administrative steps to be taken, such as the creation of bureaus of criminal identification and detection, and upon the education of the public to the need for universal finger printing, but started to whip into shape reciprocal bills to further interstate cooperation in the apprehension, prosecution, trial procedure, and in punishment and rehabilitation of criminals. These four bills were named the Close Pursuit Bill, the Extradition Bill, a Bill to Remove Out-of-State Witnesses, and one to Authorize Interstate Compacts as to Out-of-State Parolee Supervision. The Interstate Commission on Crime enlisted the assistance of 26 leading law colleges of the country in drafting the model bills. Professors from these institutions and the members of the commission's executive committee met over the week-end of November 30 and put the finishing touches upon the statutory provisions of these principles. The model bills were then sent to every governor and every attorney general in the country with the urgent request that state legislatures consider their enactment at the earliest moment.

Judge Hartshorne, in addressing the Second General Assembly of Commissioners on Interstate Cooperation, reported that to date, though this is an off-legislative year, New Jersey had passed all four bills; Indiana, Illinois, Maryland and Michigan had adopted the bill referring to out-of-state parolee provisions; and that in five other states such bills were in legislative process.

While the Interstate Commission on Crime was proceeding toward its objectives along very clear-cut lines, the Commissions on Interstate Cooperation themselves were busy with regional conferences and with perfecting their own organizations. A chronology of main activities follows:

November 18, 1935, at Albany, New York. A conference on interstate labor compacts attended by the Commissions on Interstate Cooperation of New York, New Jersey and Pennsylvania.

November 22 and 23, 1935, at New York City. First regional meeting of the commissions of these three states to perfect their organization.

December 1, 1935, at New York City, Conference of the New York and New Jersey commissions.

January 17, 1936, at Harrisburg, Pennsylvania. Regional conference on highway safety.

February 1, 1936, at New York City. Hearing on interstate milk control.

February 28 and 29, 1936, at Philadelphia. Interstate stream pollution and water-supply conference.

March 6 and 7, at Trenton. Transient relief conference.

April 3, 1936, at Philadelphia. Conference on the uses of the waters of the Delaware River Basin.

All these conferences were reported upon at the meeting on April 17, 18 and 19. Space does not permit recounting the details of these reports. A few excerpts from the reports will suffice to indicate the trend of their activities.

Joseph C. Paul, chairman of the subcommittee on Labor Compacts of the New Jersey Commission on Interstate Cooperation, reported:

"As a result of the collapse of the NRA, the United States Supreme Court put squarely up to the states the duty of action in the vast field of labor regulation which had been denied to federal power, and at the same time, gave the states their opportunity to demonstrate their capacity to act in concert and thus to check the tendency to centralize all control and all authority at Washington.

"To that end the northeastern states have held several conferences. Seven states now have agreed to a compact providing for minimum wage legisla-

tion of the mandatory type. Two have ratified the compact and three others have enacted laws which conform to the standards set by the compact.

"At almost all meetings of the interstate labor compact group the conferees have reached an agreement on the provisions of a compact for the regulation of child labor. Hours of labor and minimum wage agreements have not been so readily reached.

"It is difficult to draw up a compact on the hours of labor which is acceptable to all of the states. Southern states and the thinly populated states will not adhere to any proposal of a 40-hour week. Obviously, New Jersey is not interested in the regulation of labor in the wheat fields of North Dakota; nor is the state of Florida interested in how the state of Washington regulates her several industries. From the practical standpoint, therefore, it seems more beneficial to the people that for the present compacts be confined to regional interests. . . ."

Henry F. Long, commissioner of corporations and taxation of Massachusetts, said, in indicating what the next step should be for the Council's Interstate Commission on Conflicting Taxation:

"In the past the federal government and the states have been able to develop tax structures as expediency and need indicated. Broad-scale planning has been lacking and little attention has been given to any other taxing authority. Too little consideration has been given to the effect of tax laws upon the taxpayer and to the danger of driving property or profit-producing activities out of a given jurisdiction.

"The states have generally recognized the necessity of adopting a policy of give and take in their tax relations with neighboring states. It will be but a step for the Interstate Commission on Conflicting Taxation to expand this principle so that there will be collective activity from one end of the country to the other. It may then be advisable under congressional authority to obtain the right to have compacts between the states in respect to certain tax matters in the event that it becomes impossible to bring about cohesive action through uniform laws. The states, having improved their own status, can then approach the federal government for an interchange of ideas on tax legislation which will consider states' interests that do not conflict with federal interests. The states will find that, through cooperative action, they have developed their tax policies so as to constitute a force that cannot be ignored."

In the reports of these two men lies ample evidence of the need for the establishment of Commissions on Interstate Cooperation in all the states of the Union, and for frequent conferences of their personnel, both nationally and regionally. At our recent assembly the representatives of the states whose agricultural or industrial interests are more or less identical, for the first time met at the luncheon table to lay the groundwork of equitable interstate arrangements on taxation and other matters.

Here are two specific cases in point:

The Kentucky legislature, having abolished the state sales tax, is considering increasing the tax on production of alcoholic liquors from five to ten cents a gallon. The distillers threaten to move from the state if the production tax is raised. At the assembly Kentucky wanted to find out how the other liquor producing states felt about an interstate agreement which might hold in the state one of its chief industries, and from which it derives a large share of its income. A luncheon meeting satisfied the Kentucky delegation that something could be done. On the same day the delegations from the five southeastern flue-cured tobacco states were meeting to put into motion the machinery necessary for carrying out the provisions of the recently enacted Kerr Bill. In each of these instances months would have elapsed before even the semblance of common agreement could have been reached through correspondence or any other less effective medium than the one provided.

Two facts developed at the Second General Assembly of Commissioners on Interstate Cooperation stand out clearly: first, that regional problems involving two or more states with similar agricultural, industrial, or social problems required regional administration; and, second, that broad national problems involving the jurisdictions of individual states *could* be solved through federal-state cooperative means.

Acting on the first of these developments the assembly authorized the Board of Managers of the Council of State Governments to set up three regional secretariats, if and when funds could be provided to finance them, as follows: one district comprising Indiana, Ohio and Kentucky; another made up of the 11 public land states plus Nebraska; and a third composed of North Carolina, South Carolina, Virginia, Florida and Georgia. These would be patterned after the regional secretariat of the Council of State Governments that has functioned so effectively in the northeastern states during the past six months.

The presence of all the members of the National Resources Committee greatly aided in developing the second fact. Frederic A. Delano, vice-chairman, pledged that "we do not want to do anything for the states that they can do or had better do for themselves." He also said:

"There is today a great tendency to centralize in large corporations and in government. I believe that a minimum amount of direction from the central authority is desirable. Men who have definite ideas feel that if they have all the authority and direction in their own hands, they can secure, for a time at least, greater efficiency and net results. But eventually there will be a great loss from discouraging men in the field from doing their own thinking."

This federal-state cooperation has already become apparent, most recently within the field of operations of the Council of State Governments through the passage of the Ashurst-Sumners Act, giving blanket consent to the states to make interstate "agreements and compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies." The activity of the Interstate Commission on Crime has been greatly accelerated by this legislation and by its offer of federal cooperation.

An extension of the federal-state effort was promised by the assembly when it authorized the creation of the Interstate Commission on Social Se-

(*Continued on page* 355)

OUR HERITAGE

Present Developments Viewed in Terms of Our Common Heritage—The Beginnings of Our Bill of Rights—Parliamentary Supremacy—The Constitution of the United States Went Back to Fundamental Law—Significance of Present Pressure to Ignore or Change "The Law of the Land"—Economic and Social Phases of Present Issue—Old Stabilities Unlikely Soon to Return—Preservation of Individual Freedom The Task of These Two Great Nations*

By William L. Ransom
President of the American Bar Association

TO come to Canada under any circumstances is a happy event; to return to Ottawa and be greeted by such a gathering as this, is an honor and a privilege which should make me silent rather than vocal. With a sense of inability to make response as should be, I thank you heartily for the friendly and favorable omens of this gathering. I cannot give your greetings personal significance, nor ascribe your cordiality wholly to the organization of which I am for the moment the head. Truly you have fulfilled today such an injunction as Hamlet gave to Polonius, as to the players who had come to Elsinore:

"Use them after your own honor and dignity; the less their deserving the more merit is your bounty."

I have no official or unofficial standing in the States, which entitles me to speak here on any subject or should lead you to give authority to anything I may say or fail to say. Were this assemblage one of lawyers of your Dominion, I might speak here with some confidence and sense of right, as I did last August at the annual meeting of the Canadian Bar Association in Winnipeg. There I had the honor to be the delegate of the Bar of the States to our Canadian brethren. I do appreciate deeply what you have said, Mr. President (Mr. Duncan MacTavish), as to the service of the Bar Associations, North and South of the boundary, through the exchange of visits and ideas. Certainly we of the Bar of the States have enjoyed to the utmost the fine lawyers and wise leaders who come to us each year from the Canadian Bar Association.

Today I shall be happier the sooner you cease to think of me as President of the American Bar Association and regard me as a summer neighbor who comes to Canada at every opportunity, by choice. During more than twenty years, I have spent more summers in your provinces than anywhere else, usually with my family. We always come back to the Dominion as to an old home and to understanding friends.

The Foundations of Friendship and Respect

One thing I believe I do know, and as to that I feel I can speak here with confidence: During the past few years, and especially during the past seven months, I have seen a great deal of lawyers and people in the States, on their home grounds, in virtually all parts of the country; I believe that I have come to know what they truly and deeply feel, as to their neighbor to the North; and I wish that I could put in words the friendliness which is in their hearts, along with the full confidence that whatever issues may arise between us can and will be settled in a fair and sensible way, and in any event settled without disturbance of friendship.

Your kindly expressions here are the more stirring because they seem to me to evidence an accord of goodwill and mutual respect among the peoples of two great Nations—a sense of conviction that in the continuance of good relations and an understanding friendship there are staunch protection and many blessings for the people of these lands. May I bring to you, as I did to the Bar of Canada, the assurance, if any be needed, that these sentiments of good-will are most heartily cherished and completely reciprocated, by my brethren of the Bar of the States and by the people of the States.

I do not mind saying to you that our experience, during the years since your men and ours came home from France, has made us feel much closer to our staunch neighbor to the North. There has been a feeling that the two Nations have been pretty much in the same boat; and we have rejoiced in your successes and have felt a sense of kinship with your perplexities, as you have gone forward with your problems in your own way.

We have sincerely mourned with you the passing of that kindly and noble gentleman who was your King, and we have felt as if we knew in person his manly and democratic successor. I do not know whether you or many of us realize what the radio has done for the kinship of mankind. In countless homes in the States, the solemn exercises of the royal funeral were followed by grieving hearts; and we heard and hailed with high regard the forthright message of His Majesty Edward VIII, as speaking the thoughts and hopes of enlightened people everywhere. At a time when the mood of dictatorship so often labels itself "leadership" and mocks at liberty, we liked his declaration that it will be

"*The first object of my life* to maintain the *liberties* of my people and to promote the welfare of *all classes* of my subjects."

"Independent Types of Political and Intellectual Progress"

In the candor of friendship, I should say here today that if any of us in the States ever felt a mounting pride in our great resources and our material achievements, the chastening self-scrutiny of recent

*Address delivered before The Canadian Club of Ottawa, in the presence of the Prime Minister and many members of the Government, the Opposition, and the Civil Service, of the Dominion and the Provinces, at The Chauteau Laurier, in Ottawa, on March 14, 1936.

years has left us humble and ready to learn. We have come to realize, as never before, the profound wisdom of the observations of Mr. James Bryce, after visiting America more than forty years ago, that

"As regards the ultimate interests of the two peoples most directly concerned, it may be suggested that it is to the advantage, both of the United States and of the Canadians, that they should continue to develop independent types of political and intellectual progress. Each may, in working out its own institutions, have something to teach the other. There is already too little variety on the American Continent."

I do not believe that there has ever been a time in the States—certainly not in my span of years—when so genuine and hearty a respect and friendliness for Canada, and so deep an understanding and appreciation, has been as widely held by our people. Truly it is well for neighbors so near to clasp hands frequently.

Interchange of Experience May Be Helpful

In my boyhood days in the country, I remember that often, when the work and the worries of the crop or the harvest seemed severe beyond endurance, the men of the household went down the lane, in the cool of the evening, to the neighbor's house or yard, there to take counsel or find consolation. When stated to a patient and understanding friend, the perplexities and the problems of the day did not seem nearly so serious and unsurmountable. They lessened and faded in the telling, and faith returned. I might easily fall into some such state of mind, as I come from the atmosphere of perplexity and exasperation which pervades so much of life in the States today.

I am not at all in the mood of the man described by Canning as "the friend of every country but his own." Problems in the States are serious, but few of us despair. To realize their significance and their relation to the long march of human history, is the first step toward dealing with them in a practical way. Not many years ago, we had come hopefully to regard the United States as

> "A land of settled government,
> A land of just and old renown,
> Where freedom slowly broadens down
> From precedent to precedent."

Now we find many existing institutions and precedents sharply challenged. Changes are sought for the sake of change; and we are summoned

> "To the fields where the world's remade,
> And the ancient dreams come true."

Re-distributions of powers of government are advocated, to take down the barriers against re-distributions of property. Abuses are revealed and agitated, not that they may be remedied by majority action, but that their continuance may stir more and more of indignation on the part of rampant minorities. From high place the challenge has recently been put to our people, as to whether "the sources of their indignation" are "deep enough," so that

"Your *wrath* may sustain a genuine reconstruction of American life."

Present Developments Viewed in Terms of Our Common Heritage

What *is* the long-run significance of what is taking place in the States? How does it fit into the picture of the development of our institutions and our laws? Like your own, our institutions and our concepts of law and liberty and justice came from England, with a strong infusion of French ideals and the traditions of the Roman law. Perhaps I can state some of the present issues in terms of this common heritage, so that you will see the different roads which have been travelled by Canada and the United States. Needless to say, I am not speaking of any of the changing vicissitudes of politics or the superficial controversies upon which men think that they divide, nor am I speaking in criticism of individuals or parties or discussing developments only of the past two or three years.

My starting-point is in early English history which is a part of our heritage no less than yours, because we of the States are ever conscious that, as Professor George Burton Adams pointed out in his work on "The Origin of the English Constitution,"

"the England of those early centuries wrought out for us . . . the institutions of free government; and we have a peculiar right to feel that in tracing the steps by which they were created, we are studying our own history."

Arbitrary royal power was brought to bay on the meadows of Runnymede, in the year 1215. Barons, church and people demanded rights secure against King or supine Parliament. The outcome was the Great Charter, which remains a part of the statute law of England today and has become "the common possession of civilized mankind."

Feudal the Great Charter was in its origins; many of its concepts are obsolete and unrelated to the political and economic structures of today; but the Great Charter went round the world and became the charter of liberties for men of all races, languages and lands. Its different status, under your governmental system and ours, may be responsible for one of the significant issues in the States today.

The Beginnings of Our Bill of Rights

The first clause of the Great Charter confirmed to the freemen of the Kingdom "all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever." The basic concept was that the individual was and is possessed of fundamental rights, by "the law of the land"; that these rights may not be taken away or impaired by government; and that government should be of laws and not of men. In Clause 61, the King covenanted that he

"shall procure nothing from anyone, directly or indirectly, whereby any of these concessions and liberties might be revoked or diminished; and if any such thing has been procured, let it be *void and null.*"

Outstanding among the rights vouchsafed, the veritable keystones of the Great Charter were undoubtedly those enumerated in Clause 39, which assured freemen against arrest, imprisonment, exile, seizure, or other invasion of personal freedom,

"except by the lawful judgment of his peers or by *the law of the land.*"

This immortal phrase has echoed and dominated the law of human rights during subsequent centuries, and the cause of freedom has hinged upon the rejection of acts repugnant to "the law of the land." All appointing power might well heed the obligation imposed on the King by Clause 45, that he would

"appoint as Justices, constables, sheriffs or bailiffs *only such as khow the law of the realm and mean to observe it well.*"

It was the view in England, for at least several centuries, that the basic rights and liberties assured to freemen by "the law of the land" were beyond the power of King or Parliament to take away or violate.

In 1369, with the consent of Edward III, Parliament enacted that the Great Charter should be

"holden and kept at all points, and *if any statute be made to the contrary, that shall be holden for none.*"

Parliamentary Supremacy Against Fundamental Law

With this as our common starting-point, what has taken place, in your country and in mine? I shall not take your time in tracing the subsequent rise of the doctrine of parliamentary supremacy in England or the present status of the Great Charter under British law or your own. That is unnecessary for my present purpose. A former member of the British Cabinet has written that

"Parliament could pass a law that every redheaded man should be hanged, and the Courts of law would have to carry out its bidding."

Parliament has several times changed the period of its own term of office, and in one instance continued its members in office for four years longer than the term for which they were elected by the voters. There was no one to say to the contrary—no one to decree conformance to organic or fundamental law.

On the other hand, when the United States were formed and its Constitution was written, as indeed before that in the organic law of some of the Colonies, an enumeration of inviolable rights was made a part of the supreme "law of the land," so that "if any statute be made to the contrary," it would be "void and null" and "holden for none." In so far as these limitations and guaranties were not embodied in the submitted draft of the Constitution, they were covered by the first ten Amendments, adopted with the Constitution itself and virtually as a condition of its ratification at all.

Alexander Hamilton joined with James Madison in declaring that

"an elective despotism was *not* the government we fought for."

Patrick Henry of Virginia, fiery orator of the revolt of the Colonies, avowed that

"The judiciary are the sole protection against a tyrannical execution of the laws."

Regarding the new structure of Federal government, he declared it to be "the highest encomium that the acts of the legislature, if unconstitutional, are liable to be opposed by the judiciary."

The Constitution of the United States Went Back to Fundamental Law

In other words, those who drafted the organic law of the new republic *went back* to the concepts of "the law of the land," held in England at the tme of the Great Charter and for centuries afterwards; they deliberately barred an ascendancy of either or both the executive and legislative power; they deliberately established the supremacy of the deliberate will of the people, as embodied in a Constitution which neither the executive nor the legislative branches could change; and they empowered the judiciary to decree conformance by everyone to the fundamental law, at the suit of States or citizens.

Our Constitution accordingly set up guaranties of individual rights, which could not be contravened by the legislative or executive branches of government and could be changed only by the deliberate and mature judgment of the people acting through two-thirds of the States. Boundaries between the powers of the States and those granted to the Federal Government were set up in terms which doubtless seemed to be specific and definitive, when written, but have needed interpretation as life and commerce became more complex. Rights and powers not expressly granted by the Constitution to the Federal government, were declared to be expressly reserved to the States and the people. The guaranties of the Great Charter and subsequent declarations of human rights were taken so seriously that freedom of speech, freedom of the press, freedom of worship, freedom of assembly, jury trial, the rights of *habeas corpus,* the right of persons and their homes and their private affairs and papers to be exempt from search and invasion without legal warrant, and others, were each written into the basic law of the United States, to which all acts of the legislative and executive branches of government must conform.

The Significance of Present Pressures to Ignore or Change "The Law of the Land"

Now, in a time of transition, when there is pressure for expansion and departure from precedent as to the activities of the National government, it transpires that measures and policies are initiated which are believed by many to infringe and impair some of the traditional and most valued of the guaranteed rights and liberties of individuals, and are believed to encroach upon powers and prerogatives reserved to the States and the people. The demand and desire for governmental action are deemed to have resulted in steps contrary to the fundamental law. Challenge is made of these expedients and these invasions, as violative of "the law of the land" and the guarantees of the Bill of Rights as embodied in the Federal Constitution, and also as transcending the historic distribution of powers under our Federal system.

When innovation is enacted into law, the *first* questions with us are *not*

"Will it work? Will it prove to be impracticable and break down of its own weight? Will it be rejected by the *spirit* of our institutions and laws, and be disapproved by common sense and the spirit of fair play?"

With us, as to an innovation, the first question is of validity, not practicality. Often it happens, with us, that a measure is rejected by its results and condemned by the judgment of the people, before it comes to the final Court—that has taken place lately, in conspicuous instances; but the distinctive feature of our system is that the Federal Courts are called upon to interpret and enforce the fundamental law, and to adjudicate the validity of legislative and executive action in the light of claimed repugnance to the Constitution. The fundamental law represents the deliberate will of the people themselves, and can be and is from time to time changed by the people in a deliberate way, if the Constitution as interpreted by the Supreme Court no longer represents their sovereign will.

In enforcing the fundamental law as it now stands, the Courts are only giving effect to the deliberate will of the people against the immediate desires of legislative majorities or executive "leadership"; but it is easy to claim that the Courts are thwarting the popular will. Instead of changing the fundamental law, it is proposed by some to take away the powers of the Courts to enforce it and give it vitality. Those who seek this method are doubtless aware that the people would not vote to change their fundamental law, no matter how insistent has become the desire of some people to spend their time in controlling the lives and property of other people.

Economic and Social Phases of the Present Issue

These may be termed the juridical aspects of the present debate in the States—what are its economic

and social phases, likewise from a long-run point of view? Although not all would recognize or admit it, the issue has been indicated by some to be in about these terms: The economic, industrial and social fabric of the States has been builded on the principle and practice of private ownership of property, private enterprise, individual thrift, and the so-called *profit* motive for individual gain and advancement. Enlightened self-interest, with public control in social aspects, has been deemed to be the proper motivating force of life and government. In recent years, some place has perhaps inadequately been made for the humanitarian, the worker for the public good or for sense of workmanship; but the profit motive was ascendant.

Now it is proposed by some to substitute a new social structure, a reconstruction of society, and to eliminate for the most part the profit motive and the ambition and acquisitiveness of the individual, as social and economic forces, all in favor of some concept of the welfare and prosperity of the people as a whole. Individual thrift and saving are to be discouraged, and existing accumulations taken away. Private charities, private schools and colleges, private benevolences and eleemosynary institutions, and many good causes which depend on private benefaction, are to be strangled through the absorption of the resources of their donors, in the guise of taxation.

Whatever accumulations and reserves are necessary to be made for old age, sickness, unemployment, or provision for dependents, are to be made by government or by quasi-public institutions under strict governmental control and compulsion. The ability of industry under private ownership to maintain itself through periods of depression or to surmount great losses by fire, flood or other disaster, is to be crippled, through governmental appropriation of necessary reserves. The ability of private industry to absorb unemployment is to be taken away by taxation, and "the capitalistic system" then reproached and denounced for its inability to do more.

Private ownership and enterprise are to be supplanted with nobler visions of wider, social planning. Whole regions of territory, and the lives of thousands of people, are to be transformed according to the beneficent plans of central government. Everything a man could want, as government sees it, is to be supplied to some men at the expense of many. The new art in government appears to be to promise and to give sufficient quantities of other people's money to a number of people sufficiently large to form a safe and subservient working majority at the polls. The pretense, at first maintained, that this is done for the *general* good, is abandoned, as tending to destroy the *political* efficacy of such a re-distribution of wealth by government.

The Old Stabilities Unlikely Soon to Return

Of course, I shall not undertake to debate these issues here; I only point their existence and their significance, in relation to the general plan of individual life as you and I know it. We cannot fail to see what these issues may portend.

> "A thousand years scarce serves to form a State;
> An hour may lay it in the dust."

We may as well recognize that the old sense of stability and security does not seem to be anywhere in sight. Its return cannot be forecast. Many things will be done which many of us do not like, and the fact that we do not like them will be of little immediate consequence. In such a period, we need to hold fast to the fundamentals, which may endure.

To Preserve Individual Freedom Is the Task of These Two Great Nations

I remember that as a boy, living in the western-most county of New York State, not far from the road which traverses the portage trail over which the Indians and later the French priests and explorers at one time came from the waters of the Great Lakes on their way to the waters of the Ohio and the Mississippi, I used to go to the top of the hill which marked the divide of the watersheds. There, across Lake Erie, on a clear day, I could see the shores of Canada—the first soil I looked upon that was not of my own land. And it seemed to me, in those days, that Canada was the land of adventure and exploration, hope and high aspiration. Well, I still believe that to be true, although in a different sense.

After all, is it not true that you of Canada and we of the States are alike concerned with the realization of the individual life—not in terms of careers or goods or buildings or machines, but in terms of personal happiness, independence, security and satisfaction? If America is to be different from the Continent of Europe, then territory and possessions and all forms of collective aggrandizement must be put behind us, as destroyers of peace and security. When the masses have marched with their anthems of class revolt, and when the people have been given bread and circuses, nothing has been solved; and we return to the problem of the individual life and its free opportunities. Merely an economic individualism does not encompass the problem.

If in our world of tomorrow there is to be much of the pleasantness and the kindliness which we have loved, anything of the leisure and the open-mindedness which make men tolerant and considerate, anything of the virtues which keep men and women gracious and well-disposed, and if the pressures of economic distress are not to engender hatreds which menace freedom and submerge the individual, I believe that these two Nations of North America must go forward, side by side, in friendly and enlightened understanding, intent on providing and preserving in America the highest opportunities of individual life. If anything distinctive and enduring as an American ideal of life and its values is to be developed on this Continent from the varied and invaluable racial strains which enter into our being, then your experimentation and your experience will make a contribution no less important than that of the States.

We may truly say, with the vision of the late Mr. Justice Holmes:

> "When men have realized that time has upset many fighting faiths, they may come to believe that the ultimate good desired is better reached by *free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market*, and that the truth is the only ground upon which their wishes safely can be carried out."

AMERICAN BAR ASSOCIATION JOVRNAL

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FICTION AND FACT

In the leading article in this issue President Ransom devotes himself to the task of destroying the fiction that under the present system of organization the Annual Meeting affords the member an opportunity for a real participation in the activities of the Association, and for that reason any serious modification of its character and scope would be undesirable.

No matter what the theory may be, there is no question that the present Annual Meeting is essentially unsatisfactory in that it fails in this very respect. The small attendance at the business sessions and their perfunctory nature as a rule are a good indication that what takes place is more or less formal. The limited time leaves practically no opportunity for discussion, and committee recommendations are generally adopted as a matter of course. Elections are practically determined by the nominations and seldom is there even a ripple of contest. All this is of course a matter of common knowledge.

President Ransom points out very clearly what the present arrangement affords in contrast with what the pending plan offers. If some of the theoretical privileges possessed by the members in attendance are curtailed, the balance is more than restored by the opportunities for real discussion and for more than purely formal action in several important directions. In brief, the proposal is to make the Annual Meeting more attractive by means of a program including things which the members in attendance can really do instead of merely registering a formal assent to what has been done elsewhere.

SOME BAR ASSOCIATION CAMPAIGN DIFFICULTIES

Some of the difficulties a Bar Association encounters in its efforts to raise the standards of judicial character and capacity in its community are set forth in an article by Mr. Edward M. Martin in the April issue of the University of Chicago Law Review entitled "The Role of the Bar in Electing the Bench in Chicago."

There is first the difficulty presented by the attitude of nationalistic, racial and religious groups towards the Bar Association and its recommendations. As to this the author states that the traditional solidarity that characterizes these groups "justifies the inference that in a political contest the members of these great constituencies would vote for a member of their own race, nation, or religion first, regardless of whether he had bar endorsement and for a bar endorsee or any outsider, second. This is almost an aphorism of the political jungle. . . . Instances can be noticed of appeals along racial or nationalistic lines in the foreign language newspapers."

The attitude of civic groups is not without encouragement, as numerous organizations are shown to be willing to "go on record," support the Association in successive campaigns, listen to speakers presenting the issue, and distribute ballots. But here also difficulties present themselves. The failure of many groups to respond to Bar Association appeals "indicates a prejudice against the type of cooperation desired." Furthermore, "in several years of contact with civic groups the writer has found that unless a group has been organized for the specific purpose of supporting candidates in the same way as the Bar Association passes upon aspirants for the bench, it will studiously avoid any action that can be construed as 'political.'"

Difficulties in effectively reaching individuals are indicated in the 418 replies to a questionnaire which was addressed to Presidents and Secretaries of nonpartisan civic groups. A tabulation shows that about 54 per cent of them consciously received their information regarding candidates from the Bar Association. And of those in this class 69 per cent showed themselves favorably disposed toward the Association's activities in this direction, 6 per cent were non-committal, and 26 per cent were definitely unfavorable. The writer

continues, "The fact that more than one-fourth of the voters in a group reasonably supposed to be at least 'sympathetic' with the Association's objectives were definitely antagonistic is truly amazing."

However, the Chicago Bar Association, in spite of difficulties, has been at the job of helping to secure a well-qualified bench in Chicago for over half a century. "In fact, since 1887 the Association has almost continuously taken part in judicial elections. Its activity in this respect constitutes a remarkable record of participation in public affairs." As to results, the writer says that under an evenly-divided bipartisan system of election, such as Chicago has in theory, the Bar Association by holding a balance of power has been able to influence judicial selection as an advisory, secondary participant in the process. But, he adds, "when the system goes askew under the leadership of dominant, shifty, calculating, private-interest politicians, the Association is left literally high and dry."

The writer believes that the Association should adopt a more aggressive role, since "under existing conditions the bar primary and the ensuing publicity campaign are merely temporizing with surface indications. Structural changes are needed that will cut the lines by which the political leaders now control the selective process. These changes will come under the leadership and tutelage of the organized Bar."

Having in view the fact that the Bar Association is neither a political party nor a crusading society, and the further fact that there is always a certain prejudice against its activities in the field of judicial selection, the writer suggests that the organization get itself an ally in the form of a special organization consisting of lawyers and laymen representing the business and civic elements of the community to act as a "spearhead" for its campaigns. Such an ally, in his opinion, would be free to act more effectively than the Association itself.

JAMES M. BECK

The unexpected death of James M. Beck deprives the American Bar of an outstanding member and the nation of one of its leading citizens. He touched public and professional affairs at many points and always with a certain intellectual distinction. The members of the Association and of the Bar generally will join heartily in this tribute to him from President Ransom:

"The death of Mr. Beck is a great and untimely loss to his profession and his country. His many-sided career at the Bar was one of the most active and significant, within the present century; and his public services were many and varied. In the forum of public discussion as well as in the court-room, he was an engaging and dynamic figure; and those who did not agree with all of his views were ready to admit his sincerity and devotion to his country's cause as he saw it. His long services to the American Bar Association, as member and Chairman of its Committee on American Citizenship, were actuated by a lofty patriotism. Members of the Association will miss him from our annual meetings."

TITLE HELP FROM THE POETS

One notes a tendency on the part of writers of articles in law reviews to go more and more to the poets for help in securing an appropriate title. Take for instance, the article "Institute Bards and Yale Reviewers," by Mr. Herbert F. Goodrich in the February issue of the University of Pennsylvania Law Review, the title of which plainly derives from Byron's "British Bards and Scotch Reviewers." Also the article entitled "On Looking Into Mr. Beale's Conflict of Laws," by Mr. Frederick J. de Sloovère in the March issue of the New York University Law Quarterly Review, which of course comes straight from John Keats' "On First Looking Into Chapman's Homer."

The practice has interesting possibilities and will no doubt commend itself to others. Perhaps at no distant date we shall have some author who is dissatisfied with a review of his book, which he suspects has hardly been glanced at by the reviewer, giving a reply under some title suggestive of Wordsworth's "Yarrow Unvisited."

EXPANDING ACTIVITIES

Evidences of the expanding activities of the Association are furnished by two recent ventures in the publication field.

The first is the "Annual Review of Legal Education" which has just been prepared and published by the Section on Legal Education. It follows the plan adopted by the Carnegie Foundation, which previously published it, and contains much important information in statistical and narrative form.

The second is "Legal Notes on Local Government," the first issue of which has just been published by The Section of Municipal Law. It contains a survey of current case law, legislation and literature, dealing with that special field.

REVIEW OF RECENT SUPREME COURT DECISIONS

Withdrawal of Registration Statement Filed under Securities Act of 1933, Followed by Motion to Dismiss Proceedings, Leaves Securities and Exchange Commission without Power to Compel Production of Evidence by Registrant—Sherman Anti-Trust Act Does Not Prevent Adoption of Reasonable Means to Protect Commerce from Injurious Practices and Promote Competition on Sound Basis—New Mexico Statute Imposing Tax on Sale and Use of Gasoline Held Unconstitutional — Broadcasting of Radio Programs to Other States Held to Be Interstate Commerce in Case from State of Washington—State's Power to Alter Common Law Rule of Liability as to Corporations, Leaving Liability of Individuals Unaffected, Is Upheld—Other Cases

By EDGAR B. TOLMAN*

Securities and Exchange Commission Act—Power of Commission to Compel Response to Subpoena

A registration statement filed under the Securities Act of 1933 may be withdrawn by a registrant, charged with filing a false statement, and after such withdrawal and a motion to dismiss the registration proceeding, the Securities and Exchange Commission has no power to compel the production of evidence by the registrant, in pursuance of a stop-order proceeding, since the withdrawal of the statement accomplishes the purpose of a stop-order.

Jones v. Securities and Exchange Commission, 80 Adv. Op. 655; 56 Sup. Ct. Rep. 654.

In this case the Supreme Court considered the scope of the powers conferred on the Securities and Exchange Commission under the Securities Act of 1933.

That act, in § 2(4), defines the term issuer to include, with certain exceptions, every person who issues or proposes to issue any security. Any security may be registered with the Commission under the terms and conditions of the statute, by filing a registration statement, accompanied by a fee. The information in the statement is open to the public under regulations prescribed by the Commission. The Act prescribes in detail the character of the information which is to be set out in the statement, and contains elaborate provisions in respect of liability for false registration statements, and imposes penalties for willful violations of any of the provisions of the Act or of the rules and regulations issued by the Commission.

Section 5 (a) provides that unless a registration statement is in effect as to a security, it shall be unlawful for any one to make use of the instrumentalities of interstate commerce or of the mails to sell or offer to buy such security or to transport such security for delivery after sale.

Section 8 provides that:

"(a) The effective date of a registration statement shall be the twentieth day after the filing thereof, except as hereinafter provided, . . .

"(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. . .

"(e) The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter revelant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order."

Section 19 (b) invests the Commission with power to take testimony, supoena witnesses and require the production of books, papers, etc.

Section 22 (b) provides that subpoenas issued by the Commission may be enforced on application of the Commission by the various federal district courts.

The petitioner, on May 4, 1935, filed a registration statement under the Act covering a proposed issue of participation trust certificates. Under the Act, this was to become effective 20 days later. On the 19th day the Commission sent the petitioner a telegraphic notice reciting that the registration statement appeared to contain false statements of material facts and to omit material facts. It fixed a hearing for June 6, 1935, at which the registrant could appear and show cause why a stop order should not be issued suspending the effectiveness of the statement. The hearing was postponed until June 18th.

On June 13th, a subpoena *duces tecum* was issued commanding the petitioner to testify before an officer of the Commission and to bring with him the following:

"General ledger, subsidiary ledgers, journal, cash book, books of account and financial statements of J. Edward Jones; general ledger, journal, cash book and books of account of J. Edward Jones relating to J. Edward Jones Royalty Trust, Series 'M'; all contracts, agreements and correspondence of J. Edward Jones relating to the distribution of Participation Trust Certificates in J. Edward Jones Royalty Trust, Series 'M'; all correspondence and communications of J. Edward Jones with any State authority relating to the distribution of Participation Trust Certificates in J. Edward Jones Royalty Trust, Series 'M'."

On June 18th the petitioner, in writing, withdrew his application for registration, assigning as a reason,

**Assisted by* JAMES L. HOMIRE.

among others, that the Commission's action had been given widespread publicity and placed him in a situation to be severely damaged. Counsel for the petitioner appeared before the eaminer and presented his written withdrawal, which was marked for identification, but excluded from consideration. On June 27th, counsel again appeared and filed a dismissal of the registration statement and a withdrawal of his application. Counsel also moved to dismiss all the proceedings and to quash the subpoena. The examiner denied the motion, apparently in conformity with a regulation of the Commission which permits withdrawal only if the Commission consents thereto.

After other proceedings the Commission invoked the power of a Federal district court to compel the petitioner to give evidence. That court supported the Commission, and the circuit court of appeals affirmed. On certiorari, the Supreme Court reversed the judgment in an opinion by Mr. Justice Sutherland. Three Justices dissented.

In approaching the questions presented as to the scope of the Commission's power, MR. JUSTICE SUTHERLAND pointed out that the stop-order proceeding is analogous to a suit for an injunction, and concluded that the intervening action of the Commission had the effect of suspending the effective operation of the registration statement. After a review of cases dealing with the effect of the filing of a suit for an injunction, MR. JUSTICE SUTHERLAND said:

"When proceedings were instituted by the commission and the registrant was notified and called upon to show cause why a stop order should not be issued, the practical effect was to suspend, pending the inquiry, all action of the registrant under his statement. Unless the registration statement is effective, the issuer of a security who makes use of the mails or of the instrumentalities of interstate commerce to sell the security or to carry the same for the purposes of sale or delivery after (§ 5 (a) of the act), is liable to severe penalties of fine and imprisonment. § 24. The word 'effective', as here employed, connotes completeness of operative force and freedom to act. And a registration statement which, while still in fieri, is brought under official challenge in respect of its validity and subjected to an official proceeding aimed at its destruction, cannot be so characterized until the challenge is determined in favor of the registrant. In the meantime, since he can act only at his peril, the registration statement can in no real sense be called effective."

Consideration was then given to the right of the registrant to withdraw his application and to dismiss the proceeding. In this connection, reference was made to the analogous rule at law and in equity that a plaintiff possesses the unqualified right to dismiss his suit, unless some plain legal prejudice will result to the defendant, other than the mere prospect of a second litigation on the subject matter. Noting that the Commission apparently conceded that this general rule would govern, in the absence of the rule issued to the contrary, the Court distinguished the proceedings from the Bronx Brass Mfg. Co. case (reviewed in the April number) in which a District court rule of practice was held to have modified the general rule as to the right of a plaintiff to dismiss his suit. As to the proceeding under review, MR. JUSTICE SUTHERLAND said:

"Assuming, without deciding, that the regulation of the commission was within its power and in force, it differs essentially from the foregoing rule of the district court. As applied to this proceeding in which there are no adversary parties, the regulation does not restrict the common-law rule. That rule, as we have seen, is that the right to dismiss is unqualified unless the dismissal would legally prejudice the defendants in some other way than by future litigation of the same kind. The regulation is 'Any registration statement or any amendment thereto may be withdrawn upon the request of the registrant if the commission consents thereto. . . Such consent shall be given by the commission with due regard to the public interest and the protection of investors.' This regulation is quite as general as the rule of the common law, and the possibility that the same registration may be attempted in the future is not within its terms any more than it is within the terms of the common-law rule. The question under the regulation is whether due regard to the public interest and the protection of investors requires that the withdrawal be denied. The test is the absence or presence of prejudice to the public or investors; and, plainly enough, under the decisions of this court, the doctrine that a dismissal must be granted if no prejudice be shown beyond the prospect of another suit, *unless there be a specified rule of court to the contrary*, is applicable, and the withdrawal should have beeen allowed as of course.

"We are unable to find anything in the record, the arguments of the commission, or the decision of the court below that suggests the possibility of any prejudice to the public or investors beyond the assumption, as put by the court below (79 F. (2d) at p. 620), that 'an unlimited privilege of withdrawal would have the effect of allowing registrants whose statements are defective to withdraw before a stop order was issued and then to submit another statement with slight changes.'

"In this proceeding, there being no adversary parties, the filing of the registration statement is in effect an ex parte application for a license to use the mails and the facilities of interstate commerce for the purposes recognized by the act. We are unable to see how any right of the general public can be affected by the withdrawal of such an application before it has gone into effect. Petitioner emphatically says that no steps had been taken looking to the issue of the securities; and this is not denied. So far as the record shows, there were no investors, existing or potential, to be affected. The conclusion seems inevitable that an abandonment of the application was of no concern to anyone except the registrant. The possibility of any other interest in the matter is so shadowy, indefinite, and equivocal that it must be put out of consideration as altogether unreal. Under these circumstances, the right of the registrant to withdraw his application would seem to be as absolute as the right of any person to withdraw an ungranted application for any other form of privilege in respect of which he is at the time alone concerned.

"An additional reason why the action of the commission and of the court below cannot be sustained is that the commission itself had challenged the integrity of the registration statement and invited the registrant to show cause why its effectiveness should not be suspended. In the face of such an invitation, it is a strange conclusion that the registrant is powerless to elect to save himself the trouble and expense of a contest by withdrawing his application. Such a withdrawal accomplishes everything which a stop order would accomplish, as counsel for the commission expressly conceded at the bar. And, as the court below very properly recognized, a withdrawal of the registration statement 'would end the effect of filing it and there is no authority under sec. 19 (b) to issue the Commission subpoena and it could not be enforced by order of the district court under Sec. 22 (b).' 70 F (2d) 619.

"The action of the commission finds no support in right principle or in law. It is wholly unreasonable and arbitrary. It violates the cardinal precept upon which the constitutional safeguards of personal liberty ultimately rest—that this shall be a government of laws—, because to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy. Against the threat of such a contingency the courts have always been vigilant,

and, if they are to perform their constitutional duties in the future, must never cease to be vigilant, to detect and turn aside the danger at its beginning."

* * *

"To escape assumptions of such power on the part of the three primary departments of the government, is not enough. Our institutions must be kept free from the appropriation of unauthorized power by lesser agencies as well. And if the various administrative bureaus and commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments—even petty encroachments—upon the fundamental rights, privileges and immunities of the people, we shall in the end, while avoiding the fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties."

In another aspect of the case, the Commission contended that the court order could be supported under the general power to conduct investigations, conferred by § 19 (b). The Court, however, emphasized that the proceeding was instituted to determine whether a stop order should issue. Since dismissal of the proceeding obviated the necessity of a stop order, no justification was found for pursuing the investigation. As to this, the Court said:

"Nothing appears in any of the proceedings taken by the commission to warrant the suggestion that the investigation was undertaken or would be carried on for any other purpose or to any different end than that specifically named. An official inquisition to compel disclosures of fact is not an end, but a means to an end; and it is a mere truism to say that the end must be a legitimate one to justify the means. The citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer. Since here the only disclosed purpose for which the investigation was undertaken had ceased to be legitimate when the registrant rightfully withdrew his statement, the power of the commission to proceed with the inquiry necessarily came to an end. Dissociated from the only ground upon which the inquiry had been based, and no other being specified, further pursuit of the inquiry, obviously, would become what Mr. Justice Holmes characterized as 'a fishing expedition . . . for the chance that something discreditable might turn up' (*Ellis v. Interstate Commerce Comm.*, 237 U. S. 434, 445)—an undertaking which uniformly has met with judicial condemnation."

After reference to *In re Pacific Railway Comm.*, 32 Fed. 241, condemning "fishing bills," the opinion was concluded as follows:

"The fear that some malefactor may go unwhipped of justice weighs as nothing against this just and strong condemnation of a practice so odious. And, indeed, the fear itself has little of substance upon which to rest. The federal courts are open to the government; and the grand jury abides as the appropriate constitutional medium for the preliminary investigation of crime and the presentment of the accused for trial.

"The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing, to light. . . If the action here of the commission be upheld, it follows that production and inspection may be enforced not only of books and private papers of the guilty, but those of the innocent as well, notwithstanding the proceeding for registration, so far as the power of the commission is concerned, has been brought to an end by the complete and legal withdrawal of the registration statement.

"Exercise of 'such a power would be more pernicious to the innocent than useful to the public'; and approval of it must be denied, if there were no other reason for denial, because, like an unlawful search for evidence, it falls upon the innocent as well as upon the guilty and unjustly confounds the two. *Entick v. Carrington*, 19 Howell's St. Trials, 1030, 1074—followed by this court in *Boyd v. United States*, 116 U. S. 616, 629-630. No one can read these two great opinions, and the opinions in the *Pacific Ry. Comm.* case, from which the foregoing quotation is made, without perceiving how closely allied in principle are the three protective rights of the individual — that against compulsory self-accusation, that against unlawful searches and seizures, and that against unlawful inquisitorial investigations. They were among those intolerable abuses of the Star Chamber, which brought that institution to an end at the hands of the Long Parliament in 1640. Even the shortest step in the direction of curtailing one of these rights must be halted *in limine*, lest it serve as a precedent for further advances in the same direction, or for wrongful invasions of the others.

"*Fourth.* The foregoing disposes of the case and requires a reversal of the judgment of the lower court. In that view, it becomes unnecessary to consider the constitutional validity of the act."

MR. JUSTICE CARDOZO delivered a dissenting opinion, in which MR. JUSTICE BRANDEIS and MR. JUSTICE STONE concurred.

In the dissenting opinion, it was pointed out that the regulation gave notice to the world that a registration statement, once filed, could not be withdrawn without the consent of the Commission, and that nothing in the case gave color to the argument that the investigation was to be an unrestrained roving commission. It then added:

"If the petitioner is to prevail in his attack upon the writ, it will have to be on broader grounds than those of form and method. He must be able to make good his argument that by the mere announcement of withdrawal, he achieved results analogous to those of a writ of prohibition.

"Recklessness and deceit do not automatically excuse themselves by notice of repentance. Under § 24 of the Act, there is the possibility, at times the likelihood, of penal liability. A statement wilfully false or wilfully defective is a penal offense to be visited, upon conviction, with fine or imprisonment. Under § 12, there is the possibility, if not the likelihood, of liability for damages. The statement now in question had been effective for over twenty days, and the witness did not couple his notice of withdrawal with an affidavit or even a declaration that securities had not been sold. Nor is the statute lacking in machinery with which to set these liabilities in motion upon appropriate occasion. Under § 19 (b), plenary authority is conferred on the Commission to conduct all investigations believed to be necessary and proper for the enforcement of the Act and of any of its provisions. There will be only partial attainment of the ends of public justice unless retribution for the past is added to prevention for the future. But the opinion of the court teaches us that however flagrant the offense and however laudable the purpose to uncover and repress it, investigations under § 19 (b) will be thwarted on the instant when once the statement of the registrant has been effectively withdrawn. If that is so, or even indeed if the effect of the retraction is to embarrass the inquiry—to cloud the power to continue—the fairness of the Rule is proved out of the mouths of his accusers. If such consequences are inherent in a privilege of withdrawal indiscriminately bestowed, there is need of some restraint upon the power of the wrongdoer to mitigate the penalties attaching to his wrong. Shall

the truth be shown forth or buried in the archives? The Commission is to determine in the light of all the circumstances, including its information as to the conduct of the applicant, whether the public interest will be prompted by forgetting and forgiving."

Exception was taken also to the view that investigation for the detection of crime is for the prosecuting officer and not for the Commission. In this connection it was pointed out that the functions of the two may coincide or overlap, and that investigation by the Commission may be particularly effective, because the Act provides amnesty for the witness as a substitute for the privilege against self-incrimination.

The dissenting opinion was concluded as follows:

"The opinion of the court reminds us of the dangers that wait upon the abuse of power by officialdom unchained. The warning is so fraught with truth that it can never be untimely. But timely too is the reminder, as a host of impoverished investors will be ready to attest, that there are dangers in untruths and half truths when certificates masquerading as securities pass current in the market. There are dangers in spreading a belief that untruths and half truths, designed to be passed on for the guidance of confiding buyers, are to be ranked as peccadillos, or even perhaps as part of the amenities of business. When wrongs such as these have been committed or attempted, they must be dragged to light and pilloried. To permit an offending registrant to stifle an inquiry by precipitate retreat on the eve of his exposure is to give immunity to guilt; to encourage falsehood and evasion to invite the cunning and unscrupulous to gamble with detection. If withdrawal without leave may check investigation before securities have been issued, it may do as much thereafter, unless indeed consistency be thrown to the winds, for by the teaching of the decision withdrawal without leave is equivalent to a stop order, with the result that forthwith there is nothing to investigate. The statute and its sanctions become the sport of clever knaves.

"Appeal is vaguely made to some constitutional immunity, whether express or implied is not stated with distinctness. It cannot be an immunity from the unreasonable search or seizure of papers or effects: the books and documents of the witness are unaffected by the challenged order. It cannot be an immunity from impertinent intrusion into matters of strictly personal concern: the intimacies of private business lose their self-regarding quality after they have been spread upon official records to induce official action. In such circumstances the relevance of *Entick v. Carrington*, 19 Howell's. St. Trials, 1030, 1074, or *Boyd v. United States*, 116 U. S. 616, 629, or the *Matter of the Pacific Railway Commission*, 32 Fed. 241, 250, is not readily perceived. . . .If the immunity rests upon some express provision of the Constitution, the opinion of the court does not point us to the article or section. If its source is to be found in some impalpable essence, the spirit of the Constitution or the philosophy of government favored by the Fathers, one may take leave to deny that there is anything in that philosophy or spirit whereby the signer of a statement filed with a regulatory body to induce official action is protected against inquiry into his own purpose to deceive. The argument for immunity lays hold of strange analogies. A Commission which is without coercive powers, which cannot arrest or amerce or imprison though a crime has been uncovered or even punish for contempt, but can only inquire and report, the propriety of every question in the course of the inquiry being subject to the supervision of the ordinary courts of justice, is likened with denunciatory fervor to the Star Chamber of the Stuarts. Historians may find hyperbole in the sanguinary simile.

"The Rule now assailed was wisely conceived and lawfully adopted to foil the plans of knaves intent upon obscuring or suppressing the knowledge of their knavery."

The case was argued by Messrs. Harry O. Glasser and James M. Beck for petitioner, and by Solicitor General Reed and John J. Burns for the respondent.

Anti-Trust Law—Conspiracy in Restraint of Trade —Price Fixing Agreements

The restrictions imposed by the Sherman Anti-Trust Act set up essential standards of reasonableness, and do not prevent the adoption of reasonable means, through concerted action, to protect commerce from injurious practices and to promote competition on a sound basis. But the lawfulness of objects to be accomplished will not justify illegal means. Where it is sought to accomplish such objects by means of an agreement among dominant members of an industry to sell without deviation a thoroughly standardized commodity, such as sugar, at prices announced in advance, and the purpose is to create and maintain a uniform price structure and suppress price competition, the agreement is in violation of the Anti-Trust Act, as an illegal restraint on interstate commerce.

Sugar Institute, Inc., et al, v. United States, 80 Adv. Op. 624; 56 Sup. Ct. Rep., 629.

This case came before the Supreme Court on a direct appeal from a decree of the district court, enjoining the appellants from various activities which were held to be in violation of the Sherman Anti-Trust Act. With slight modifications, the decree of the district court was affirmed in an opinion by MR. CHIEF JUSTICE HUGHES.

The record in the case was unusually voluminous, and in dealing with the appeal the Court restricted its discussion to the salient points of the controversy. The suit was brought to dissolve the Sugar Institute, Inc., a trade association, and to restrain the companies which compose it and the individual defendants from engaging in an alleged conspiracy in restraint of interstate and foreign commerce. The decree of the district court did not dissolve the Institute, but did enjoin the defendants from some 45 stated activities.

The range of the court's discussion extended over the following aspects of the controversy: (1) the special characteristics of the sugar industry and the practices which obtained prior to the organization of the Institute; (2) the purposes for which the Institute was founded; (3) the agreement and practices of the members of the Institute; and (4) the application of the Anti-trust Act, and the provisions of the decree.

The defendants, members of the Institute, refine practically all the imported raw sugar processed in this country, and supply from 70 to 80%, of the sugar consumed in this country, and all are engaged extensively in interstate commerce. It was found that the defendants' refined cane sugar is a thoroughly standardized commodity, and, generally speaking, price rather than brand is the vital consideration in buying and selling the commodity. It was also found that the "basis prices" quoted by the several refiners in any particular trade area were generally uniform both before and after the Institute, because sugar is a thoroughly standardized product.

The defendants urged that the occasion for the formation of the Institute was the existence of grossly unfair and uneconomical practices of the trade, and that no proper appraisal can be made of the motives and transactions of the defendants without full understanding of the unfortunate conditions prevailing in the industry. The existence of unfavorable conditions was the subject of extensive findings. Among them were the granting of secret concessions to purchasers by so-called "unethical" refiners; overcapacity in production; lack of adequate statistical information contributing to overproduction, and unfair and uneconomic competitive

conditions. These are summed up in the following finding by the trial court:

"The industry was characterized by highly unfair and otherwise uneconomic competitive conditions, arbitrary, secret rebates and concessions were extensively granted by the majority of the companies in most of the important market areas and the widespread knowledge of the market conditions necessary for intelligent, fair competition were lacking. The refiners were disturbed economically and morally over the then prevailing conditions. At least one refiner, American was concerned about the possibility of liability under the Clayton Act because of the discriminations resulting from the various concessions."

The mode of organizing the Institute and the purposes to be accomplished by it were next considered. The defendants emphasized that the certificate of incorporation of the Institute, its by-laws and "Code of Ethics" had been submitted to the Department of Justice. The Department investigated the Institute three times, and had access to its files. The purposes of formation were the abolition of the secret concessions system by the adoption of principles of open prices publicly announced, without discrimination; the supplying of accurate trade statistics; elimination of wasteful practices; creation of a credit bureau; and the institution of an advertising campaign. These purposes were recognized, but the trial court found that they were not the dominant purposes of the organization, but that the dominant objective was the control of prices. As to this the trial court found:

"36. I find that defendants' dominant purposes in organizing the Institute were: to create and maintain a uniform price structure, thereby eliminating and suppressing price competition among themselves and other competitors; to maintain relatively high prices for refined, as compared with contemporary prices of raw sugar; to improve their own financial position by limiting and suppressing numerous contract terms and conditions; and to make as certain as possible that no secret concessions should be granted. In their efforts to accomplish these purposes, defendants have ignored the interests of distributors and consumers of sugar."

It was found also that the defendants had gone much further than necessary to accomplish their avowed purposes.

"37. At the inception of the Institute, defendants adopted a general agreement ostensibly to abolish all discriminations between customers but which in general purpose and effect amounted to an agreement not to afford different treatment to different customers, regardless of the varying circumstances of particular transactions or classes of transactions and regardless of the varying situation of particular refiners, distributors or customers or classes thereof. Under the guise of performing the agreement, against discriminations, defendants limited and suppressed numerous important contract terms and conditions in the particulars herein set forth, chiefly for the purpose and with the effect of accomplishing the objectives described in finding 36".

An examination was then made of the transactions from which the inference of purpose was drawn. It must suffice here to state briefly the nature of the various transactions in question. Foremost among these was the basic agreement of refiners, under the Code of Ethics, to sell only on prices openly announced, and upon certain supplementary restrictions. The practice of the trade was buying and selling on "Moves" after public announcement of an advance in selling price within a stated time. This practice of selling on prices publicly announced had developed prior to the Institute, and it, without more, was not the object of criticism. However, that practice had been supplemented, under the basic agreement, to require adherence to the announced prices, without deviation. In this respect, the basic agreement was thought to be an unreasonable restraint of commerce. As to this phase of the case, the Court said:

"The distinctive feature of the 'basic agreement' was not the advance announcement of prices, or a concert to maintain any particular basis price for any period, but a requirement of adherence, without deviation, to the prices and terms publicly announced. Prior to the Institute, the list prices which many of the 'unethical' refiners announced, 'were merely nominal quotations and bore no relation to the actual "selling bases" at which their sugar was sold. . . The selling price was the price at which they purported to sell; the secret concessions were from this basis'. And, in the case of some of the 'unethical' refiners, changes in selling bases were made from time to time without formal public announcement in advance. The Institute sought to prevent such departures. As defendants put it: 'Having adopted the principle of open prices and terms, without discrimination among customers, as the means of remedying the evils of the secret concession system, the defendants lived up to the principle'. The court found:

" '40. Under the Institute, defendants agreed to sell, and in general did sell sugar only upon open prices, terms and conditions publicly announced in advance of sales, and they agreed to adhere and in general did adhere without deviation, to such prices, terms and conditions until they publicly announced changes'.

"It was because of the range and effect of this restriction, and the consequent deprivation of opportunity to make special arrangements, that the court found that the agreement and the course of action under it constituted an unreasonable restraint of trade. The court deemed it to be reasonably certain that 'any unfair method of competition caused by the secret concession system' could have been prevented by 'immediate publicity given to the prices, terms and conditions in all closed transactions', without an agreement to sell only on the basis 'of open public announcement in advance of sales'. A 'purpose and effect' of that agreement, the court found, was to aid defendants in preventing and limiting 'certain types of transactions in which private negotiations are essential.' Its operation 'tended in fact, as it naturally would tend, toward maintenance of price levels relatively high as compared with raws'."

Numerous practices designed to support the basic agreement were also condemned by the trial court. These related to the defendants' compelling a dissociation of the functions of warehousemen and brokers, regulation of practices as to charging and absorption of transportation rates, elimination of numerous consignment points, long term contracts, quantity discounts and withholding of certain statistical information from purchasers. For a discussion of these features, the opinion of the Court must be referred to.

The Court, after discussion of the purpose and activities of the Institute and the defendants, then dealt with the application of the Anti-Trust Act. Pointing out that Act sets up a standard of reasonableness and recognizing that it does not forbid concerted action to improve conditions, the Court said:

"The restrictions imposed by the Sherman Act are not mechanical or artificial. We have repeatedly said that they set up the essential standard of reasonableness. . . They are aimed at contracts and combinations which 'by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restraining competition or unduly obstructing the course of trade.' . . Designed to frustrate unreasonable restraints, they do not prevent the adoption of reasonable means to protect interstate commerce from destructive or injurious practices and to promote competition upon a sound basis. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appro-

priately have wider objectives than merely the removal of evils which are infractions of positive law. Nor does the fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, require that abuses should go uncorrected or that an effort to correct them should for that reason alone be stamped as an unreasonable restraint of trade."

However, it was observed also that freedom of concerted action to improve conditions does not justify illegal means. In this connection the controlling position of the defendants in the industry, together with the vital effect of price control was emphasized. Relative to these the opinion states:

"The freedom of concerted action to improve conditions has an obvious limitation. The end does not justify illegal means. The endeavor to put a stop to illicit practices must not itself become illicit. As the statute draws the line at unreasonable restraints, a cooperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them. The decisions on which defendants rely emphasize this limitation. In *Chicago Board of Trade v. United States*, 246 U. S. 231, the Court found the assailed rule to be a reasonable regulation in a limited field. In the case of *Appalachian Coals*, 288 U. S. 344, the Court found that abundant competitive opportunities would exist in all markets where defendants' coal was sold, and that nothing had been shown to warrant the conclusion that defendants' plan would have an injurious effect upon competition in those markets. In *Standard Oil Company v. United States*, 283 U. S. 163, relating to contracts concerning patents for cracking processes in producing gasoline, an examination of the transactions involved led to the conclusion 'that no monopoly of any kind or restraint of interestate commerce' had been effected 'either by means of the contracts or in some other way'. . . And, while the collection and dissemination of trade statistics are in themselves permissible and may be a useful adjunct of fair commerce, a combination to gather and supply information as a part of a plan to impose unwarrantable restrictions, as, for example, to curtail production and raise prices, has been condemned.

"We have said that the Sherman Act, as a charter of freedom, has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions. Thus in applying its broad prohibitions, each case demands a close scrutiny of its own facts. Questions of reasonableness are necessarily questions of relation and degree. In the instant case, a fact of outstanding importance is the relative position of defendants in the sugar industry. We have noted that the fifteen refiners, represented in the Institute, refine practically all the imported raw sugar processed in this country. They supply from 70 to 80 per cent. of the sugar consumed. Their refineries are in the East, South and West, and their agreements and concerted action have a direct effect upon the entire sugar trade. While their product competes with beet sugar and 'offshore' sugar, the maintenance of fair competition between the defendants themselves in the sale of domestic refined sugar is manifestly of serious public concern. Another outstanding fact is that defendants' product is a thoroughly standardized commodity. In their competition, price, rather than brand, is generally the vital consideration. The question of unreasonable restraint of competition thus relates in the main to competition in prices, terms and conditions of sales. The fact that, because sugar is a standardized commodity, there is a strong tendency to uniformity of price, makes it the more important that such opportunities as may exist for fair competition should not be impaired.

"Defendants point to the abuses which existed before they formed the Institute, and to their remedial efforts. But the controversy that emerges is not as to the abuses which admittedly existed, but whether defendants' agreement and requirements went too far and imposed unreasonable restraints. After a hearing of extraordinary length, in which no pertinent fact was permitted to escape consideration, the trial court subjected the evidence to a thorough and acute analysis which has left but slight room for debate over matters of fact. Our examination of the record discloses no reason for overruling the court's findings in any matter essential to our decision."

In conclusion, certain modifications in the decree were made.

MR. JUSTICE SUTHERLAND and MR. JUSTICE STONE took no part in the consideration and decision of the case.

The case was argued by Mr. John C. Higgins for the appellants, and by Messrs. Angus D. MacLean and Walter L. Rice for the Government.

Taxes—Excise Taxes—Interstate Commerce

A state tax on all gasoline used within a state by a common carrier engaged solely in interstate transportation by motor busses is invalid as an undue burden on interstate commerce where, under the state law, the exaction is an excise, and not a charge imposed for the use of state highways.

A state license fee imposed on distributors of gasoline is invalid also as to such carrier.

Bingaman et al v. Golden Eagle Western Lines, Inc., 80 Adv. Op. 600; 56 Sup. Ct. Rep. 624.

This opinion dealt with a question as to the validity of a tax imposed by a statute of New Mexico upon the sale and use of gasoline. As applied to the appellee, a common carrier operating busses in interstate commerce, the district court held the tax an unconstitutional regulation of interstate commerce.

The appellee's busses operate exclusively in interstate commerce. The statute imposes an excise tax of 5c per gallon on the sale and use of all gasoline. An annual license must be obtained by a distributor importing, receiving, using, selling or distributing any motor fuel, and a license fee of $25 is exacted for each distribution station. A "distributor," as defined by the Act, includes a corporation consuming and using in the state any motor fuel purchased in and brought from another state. "The effect of the statute is to compel a common carrier engaged exclusively in interstate transportation to procure a license as a 'distributor' and pay an excise tax upon the use of motor fuel purchased in, and brought from, another state and used only in such transportation."

In determining the validity of the tax, the Supreme Court, in an opinion by MR. JUSTCE SUTHERLAND, declared that the exaction must stand or fall on the test of whether it is a charge by the State as compensation for the use of highways, or is an excise tax for the use of an instrumentality of interstate commerce.

Holding that, under the decisions in New Mexico, it is a tax on an instrumentality of interstate commerce, the Supreme Court affirmed the decree of the district court enjoining the appellants from enforcing the tax. As to the nature of the taxes and their consequent invalidity, MR. JUSTICE SUTHERLAND said:

"The state supreme court has construed the provisions in *Geo. E. Breece Lbr. Co. v. Mirabal*, 34 N. Mex. 643, and *Transcontinental & Western Air, Inc. v. Lujan*, 36 N. Mex. 64; and the court below, rightly concluding that it was bound by this construction, thought that it settled the matter against the validity of the tax. With this view we agree.

"The New Mexico decisions dealt with an earlier act, the terms of which, however, without material change,

were carried forward into the act of 1933, with the result that the new act became a continuation of the earlier one. *Bear Lake Irrigation Co. v. Garland*, 164 U. S. 1, 11-14. Compare *Posadas v. National City Bank of New York*, — U. S. —, January 6, 1936. In the Breece case the state court held that the exaction was a general excise tax upon the use of all gasoline in the state, and that it was not imposed for the use of the state roads. The court considered the suggestion that the entire proceeds of the tax were devoted by law to the building and improvement of the state highways, but said that this would not alter the fact that the tax was not exacted for the privilege of using these highways. The Lujan case reached the same conclusion. The state court drew a sharp distinction between the excise tax on the sale and that on the use of gasoline, holding the first to be valid and the second to be repugnant to the commerce clause of the federal Constitution as applied to an interstate air carrier. Both cases definitely refused to accept the view that the tax was a charge for the use of the highways."

* * *

"As applied to appellee, an interstate carrier doing no intrastate business of any description, section 3 of the act, which exacts license fees from distributors, is plainly invalid as imposing a direct burden upon interstate commerce."

The case was argued by Messrs. J. R. Modrall and Quincy D. Adams for the appellants, and by Mr. Ivan Bowen for the appellee.

Taxation—State Occupation Tax—Receipts from Broadcasting in Interstate Commerce

The broadcasting of radio programs to other states constitutes interstate commerce, and the state in which the broadcasting stations are operated is without power to tax receipts from such business, for the reason that such tax would be an unconstitutional burden on interstate commerce.

Fisher's Blend Station, Inc., v. Tax Commission, 80 Adv. Op., 615; 56 Sup. Ct. Rep., 608.

This opinion related to the constitutional validity of an occupation tax, imposed by the State of Washington, measured by the gross receipts from radio broadcasting from stations within the State. The State Court, on demurrer to a bill to enjoin collection of the tax, sustained the exaction. On appeal this judgment was reversed by the Supreme Court, in an opinion by MR. JUSTICE STONE.

The appellant maintains, in the State, two broadcasting stations, which operate under a federal license to broadcast throughout areas which extend into other states and to Alaska, Hawaii, Canada and to the high seas. The appellant's entire income consists of payments for broadcasting for customers who desire the broadcasts to reach listeners in other states.

The State Court recognized that state taxation of income derived from interstate commerce is forbidden by the commerce clause, but upheld the tax on the ground that the business in question is not interstate commerce. Holding otherwise, and drawing an analogy to the business of transmitting sounds by telephone wires, MR. JUSTICE STONE said:

"We may assume, although it is not alleged, that appellant's customers produce the sounds which are broadcasted. But it sufficiently appears, although the complaint does not specifically so state, that appellant, and not the customer, generates the electric current and controls the apparatus (generator, transmitter and their controls) by which the sounds are broadcasted. The complaint states that appellant operates its stations and conducts the business of broadcasting in the manner already described, and that the license to operate them is granted to appellant by the Federal Radio Commission under the Federal Radio Act. These allegations, read in the light of the statute, which forbids any save licensees to operate broadcasting apparatus, § 1, Federal Radio Act of 1927, 44 Stat. 1162, and of the facts of which we have judicial knowledge, . . . must be taken to state that the broadcasting of radio emanations, as distinguished from the production of the sounds broadcasted, is effected by appellant and not by its customers.

"The sounds broadcasted are not transmitted from the microphone to the ears of listeners in other states. They do not pass as sound waves to the receiving mechanisms. They serve only to enable the broadcaster, by the use of appropriate apparatus, to modulate the radio emanations which he generates. These emanations as modulated, are projected through space to the receiving sets. There, by a reverse process, they so actuate the receiving mechanisms as to produce a new set of sound waves, of frequencies identical with those produced at the microphone. On the argument it was conceded that, in broadcasting for its customer, appellant, by generating the necessary electric power and controlling the transmitter, produces the radio emanations which actuate the receiving mechanisms located in other states. Upon the facts alleged, we see no more basis for saying that appellant's customers do the broadcasting than for saying that a patron of a railroad or a telephone company alone conducts the commerce involved in his railroad journey or telephone conversation.

"Appellant is thus engaged in the business of transmitting advertising programs from its stations in Washington to those persons in other states who 'listen in' through the use of receiving sets. In all essentials its procedure does not differ from that employed in sending telegraph or telephone messages across state lines, which is interstate commerce. . . . In each, transmission is effected by means of energy manifestations produced at the point of reception in one state which are generated and controlled at the sending point in another. Whether the transmission is effected by the aid of wires, or through a perhaps less well understood medium, 'the ether', is immaterial, in the light of those practical considerations which have dictated the conclusion that the transmission of information interstate is a form of 'intercourse', which is commerce. . .

"Similarly, we perceive no basis for the distinction urged by appellee, that appellant does not own or control the receiving mechanisms. The communications broadcasted are no less complete and effective, nor any the less effected by appellant, because it does not own or command the apparatus by which they are received. The essential purpose and indispensible effect of all broadcasting is the transmission of intelligence from the broadcasting station to distant listeners. It is that for which the customer pays. By its very nature broadcasting transcends state lines and is national in its scope and importance—characteristics which bring it within the purpose and protection, and subject it to the control, of the commerce clause."

The case was argued by Messrs. Donald Graham and Godfrey Goldmark for the appellant, and by Mr. E. P. Donnelly for the appellee.

State Statutes—Liability of Employers—Power to Alter Liability of Corporations

Alteration of the common law rule of liability that a servant assumes the risk of injury through the negligence of a fellow servant, so as to impose liability therefor on the employer, in the case of corporations, is not a violation of the equal protection clause of the Fourteenth Amendment, even though the rule of liability in such cases is left unchanged as to individual employers.

Power to change such rule of liability as to corporations may be exercised by the State under a power to alter,

revoke or annul corporate charters or, as to foreign corporations, under the power to prescribe conditions under which they shall be admitted to do business in the State.

Phillips Petroleum Company v. Jenkins; 80 Adv. Op., 642; 56 Sup. Ct. Rep., 611.

This opinion dealt with an appeal from the Supreme Court of Arkansas, affirming a judgment recovered by an employee of the Phillips Petroleum Company against the employer, for personal injuries sustained by reason of the negligence of another employee. The petroleum company is a Delaware corporation authorized to engage in business in Arkansas. It produces and transports oil. A statute of the State, passed in 1907, makes all corporations liable for injuries sustained by any employee resulting from the negligence of any other employee.

The Arkansas Constitution, Art. XII, § 6, provides that:

"Corporations may be formed under general laws, which laws may, from time to time, be altered or repealed. The General Assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators."

The State Constitution further provides that foreign corporations may be admitted to do business in the state, subject to the same regulations and liabilities as like domestic corporations, as to contracts made and business done in the State. As to domestic corporations, the provisions as to employer's liability, above referred to, have been frequently upheld in Arkansas as a proper exercise of the State's power over corporations. The appellant made no complaint that there was any discrimination between domestic and foreign corporations. It urged, however, that the liability provisions deny equal protection of the laws, in violation of the Fourteenth Amendment, because they alter the common law rule as to the employer's liability where the employer is a corporation, while leaving in force as to individual employers the common law that the servant assumes the risk of injuries through the negligence of his fellow servants.

On the appeal to the Supreme Court, the judgment was affirmed in an opinion by MR. JUSTICE BUTLER. The Court gave attention to the question whether the State may prescribe the rule of liability as a part of the charter of domestic corporations and as a condition for admission of foreign corporations. Holding that the State may prescribe such rule of liability, either originally in the charter or under the power reserved to amend the charter, MR. JUSTICE BUTLER, said:

"The reservation of power to amend is a part of the contract between the State and the corporation and therefore § 10 of Art. I of the Federal Constitution does not apply. The reserved power is not unlimited and cannot be exerted to defeat the purpose for which the corporate powers were granted, or to take property without compensation, or arbitrarily to make alterations that are inconsistent with the scope and object of the charter or to destroy or impair any vested property right. On the other hand, it extends to any alteration or amendment 'which will not defeat or substantially impair the object of the grant, or any right vested under the grant, and which the legislature may deem necessary to carry into effect the purpose of the grant, or to protect the rights of the public or of the corporation, its stockholders or creditors, or to promote the due administration of its affairs.' As the State may not surrender or bind itself not to exert its police power to guard the safety of workers, the common law fellow-servant rule may be abrogated by statute even when included in the charter of a corporation. But we accept the State's determination that the provision of § 7137 here involved is a part of the charters of corporations organized in Arkansas since its enactment and that, through the power to alter or amend, it is included in the charters of corporations earlier organized under the laws of that State.

"Essential to a just consideration of appellant's contention is a definite understanding of what is denied to it by the construction put upon § 7137 by the state supreme court. It was, as described by that court in an earlier case, 'the common-law rule that a servant assumes the risk of negligence of his fellow servant'. That assumption, like the assumption of other risks incident to the employee's work, is an implied one and constitutes a part of the contract of employment. The section as construed below operates merely to negative the implication, to eliminate that term of the contract and, in its stead, to insert in charters of corporations the rule that they shall be liable for injuries suffered by an employee through negligence of another employee. It merely substitutes the rule of respondeat superior for the common law fellow-servant rule.

"The power reserved by the state constitution to the general assembly 'to alter, revoke or annul' any charter of incorporation is not a general authorization. Amendment may only be made whenever in the opinion of the general assembly the charter 'may be injurious to the citizens of this State' and then only 'in such manner, however, that no injustice shall be done to the corporators'. The enactment of § 7137 necessarily implies legislative determinations in accordance with these requirements. There is nothing in the record or of which judicial notice may be taken to negative the conclusions of the general assembly upon the matters specified or to show that the distinction made by the statute is a groundless and arbitrary discrimination against corporations."

The case was argued by Mr. Rayburn L. Foster for the appellants, and by Mr. Robert C. Knox for the appellee.

Special Assessments for Local Improvements—Street Paving Improvements

Where, under the state law, a street railway company is liable for assessments for paving the street in which its tracks are located irrespective of benefits received, it is not a denial of due process, in a proceeding contesting the validity of the assessment, to deny to the street railway an opportunity to show that it received no benefit from the improvement.

Georgia Railway & Electric Co. v. Decatur, 80 Adv. Op., 614; 56 Sup. Ct. Rep., 606.

This opinion related to a cause which was previously before the Supreme Court and reported in 295 U. S. 165. Upon the prior appeal the Court had held that under the rulings in Georgia, where the cause originated, the appellee, City of Decatur, had power to assess paving costs against a utility only on the basis of benefits received, and that since the appellants had been deprived of the opportunity to show absence of benefit received, there had been a denial of due process of law.

When the cause was remanded, the State Court considered the local statutes, and construed them as enacting that a street railway company cannot defend against a street paving assessment, for paving a street occupied by its line, on the ground that it derives no benefit from the improvement.

In this view of the statutes, the federal Supreme Court concluded that there had been no deprivation of a federal right in denying the appellants the oppor-

tunity to show that they received no benefit from the paving improvement. As to this question, MR. JUSTICE MCREYNOLDS, delivering the opinion of the Court, said:

"In the circumstances disclosed by the record, will appellants be deprived of the equal protection or due process of law if the State statutes, as finally interpreted, are applied to them?

"Upon this point, counsel submit:—Under the statutes as construed, other parties would be subject to assessment by the municipality for the cost of paving only upon the basis of benefits; appellants would be liable without regard thereto. Street railways are entitled to the same constitutional protection accorded to others. Also, that if the special assessment was product of the police or taxing power, the utility was entitled to a judicial hearing in respect of its unreasonable or arbitrary exercise.

"Considering our declarations in *Durham Public Service Co. v. Durham*, 261 U. S. 149, that 'There are obvious reasons for imposing peculiar obligations upon a railway in respect of streets occupied by its tracks,' we cannot say the Supreme Court erred in concluding there was no violation of the equal protection clause. . .

"The power of the municipality to require a street railway to pave streets used by it, without regard to benefits, is clear enough. *Durham, etc. Co. v. Durham*, supra; *Southern Wisconsin Railway Co. v. Madison*, 240 U. S. 457, 461. The court below recognized the general right to demand inquiry concerning arbitrary exercise of the taxing or police power, when adequately alleged. But it found that appellants had not set up that defense, except as implied in the claim that any assessment not based on benefits was arbitrary and unreasonable. The court, we think, correctly said—

"'There is no question as to the regularity of the assessment under the general law of the State, and the charter of the city as amended, and the ordinances duly enacted thereunder. It has already been determined that the paving was done and that the assessment therefor was made in conformity to the law. Payment therefor is undertaken to be avoided by the power company on the ground that the pavement was of no benefit to the company. It has been held by this court, in construing the law of the State in reference to street paving and cost thereof, that a street railway could not defend against the payment on the ground of no benefit.'

"Appellants have failed to show deprivation of any federal right through denial of opportunity to rely upon an adequate defense, properly advanced."

The case was argued by Mr. Walter T. Colquitt for the appellants, and by Mr. James A. Branch for the appellees.

State Taxes—Tax on Interstate Railway's Net Income Within the State

A formula for determining the taxable net income within the state of an interstate railway, which provides that such income within the state shall be ascertained by taking gross operating revenues in the state, including in its gross operating revenues within the state the equal mileage proportion of its interstate business, and deducting from its gross operating revenues the proportionate average of operating expenses or operating ratio for its whole business is not void on its face.

As applied to a particular railway company, the formula is not shown to be invalid in its application by proof merely that the actual operating expenses of lines within the state were far in excess of those allowed by the Commissioner making the assessment and no proof is introduced to show what the actual gross revenues were.

Norfolk and Western Railway Co. v. North Carolina, 80 Adv. Op. 609; 56 Sup. Ct. Rep. 625.

This case involved a question whether a North Carolina statute levying a tax on the net income of interstate railway companies has been so applied as to violate constitutional prohibitions.

The appellant's lines in North Carolina are branch lines, and for the years 1927, 1928 and 1929 it made returns to the North Carolina Commissioner of Revenue that it had no taxable income. The Commissioner notified the Company that the returns were erroneous, and assessed taxes for each year in slightly varying amounts, totalling $86,421.71. After payment of the taxes the Railway sued to recover the amounts paid. The State courts denied recovery. On appeal their ruling was sustained by the Supreme Court, in an opinion by MR. JUSTICE CARDOZO.

The applicable statute taxes the net income of interstate railways according to the following formula:

"And when their business is in part within and in part without the State, their net income within this State shall be ascertained by taking their gross 'operating revenues, within the State, including in their gross 'operating revenues' within this State the equal mileage proportion within this State of their interstate business, and deducting from their gross 'operating revenues' the proportionate average of 'operating expenses' or 'operating ratio' for their whole business, as shown by the Interstate Commerce Commission standard classification of accounts."

Declaring that the formula is not void on its face, MR. JUSTICE CARDOZO said:

"A division of revenues and costs in accordance with state lines can never be made for a unitary business with more than approximate correctness. There is a tendency, none the less, for rates to be so adjusted to expenses over different portions of a system as to produce, when averages are considered, a uniformity of net return, or a fair approach thereto. Thus mileage may have at times a relation to a tax upon net income which it may not bear to a property tax or even to one upon the value of a franchise. . . Taxpayer and state would be swamped with administrative difficulties if left to struggle through every case without the aid of a formula of ready application. In the perplexities besetting the process of assessment the statute is the outcome of a reasonable endeavor to arrive at a proportion of general validity. . . No contention to the contrary is made by the appellant."

It was recognized, also, by the Court that a formula not void on its face may be invalid when applied to a particular railway in particular circumstances. With these principles in mind, attention was turned to the railway's contention that operating expenses applicable to the branches were greatly in excess of what the Commissioner allowed. The railway introduced evidence to support this contention, but failed to go further. Commenting on the failure of the railway to show that gross revenues did not offset the inadequate allowance for expenses, MR. JUSTICE CARDOZO said:

"From the testimony of its witnesses we learn that actual expenses were greater in North Carolina than the average expenses apportioned to that state on the basis of the ratio between state and system mileage. We learn nothing from these witnesses as to the ratio between revenues, average and actual. For all that appears in the case developed by the Railway, actual gross revenues in North Carolina may have been so far in excess of average gross revenues computed under the statute as to neutralize the discrepancy between actual and average costs of operation. If such a counterbalance exists, appellant has not been injured through the application of the formula."

The State, however, introduced evidence to show that through the application of the formula gross revenues are underestimated to a greater extent than operating costs. Without elaboration of the controversies, as to this point, attention may be called to the Court's conclusion that the railway's argument could not be

accepted in view of its failure to give evidence of the ratio between actual and average receipts. As to this MR. JUSTICE CARDOZO said:

"We are unable to accept the argument for the appellant that its burden was discharged when it gave evidence of the ratio between actual and average expenses while keeping silent as to the ratio between actual and average receipts. The statutory formula is not framed on an assumption that gross operating revenues are uniform actually for every mile throughout the system. It is not framed on an assumption that for every mile of the system there is uniformity of expense. Such assumptions, if made, would be contrary to notorious facts. What the formula does assume is this, that barring exceptional conditions there will be throughout the system such an average relation between revenues and expenses as will cause the net income of a part to vary, in proportion to the mileage, with the net income of the whole. The implications of the formula being what they are, a taxpayer does not escape the application of the statute by evidence directed to only one of the related terms. Its evidence to be effective must be directed to each of them alike, for only thus can the assumed relation between them be proved to be unreal. This taxpayer disclaims the duty and even the endeavor to respond to such a test. It varies the numerator of the fraction while accepting the denominator."

The opinion concluded with certain comments on criticisms which the railway leveled at evidence introduced by the State. The Court pointed out that these criticisms did not shift the burden of proof from the taxpayer to the State.

The case was argued by Mr. F. M. Rivinus for the appellant, and by Mr. A. A. F. Seawell for the appellee.

SCIENTIFIC BOUNDARY DESCRIPTIONS

A Discussion of the New Jersey Statute, (Ch. 116, P. L. No. 1935) Providing a Proper Method for Describing Land, from the Viewpoint of a Civil Engineer

BY PHILIP KISSAM

Associate Professor of Civil Engineering, Princeton University

[INTRODUCTORY NOTE by R. G. Patton, Chairman of Section of Real Property Law:

Whether land is described by courses and distances, natural boundaries, or the subdivisions of either a public or a private survey, the entire matter rests upon the accuracy of location of a basic starting point or of a basic line, plus accuracy of course and distance from the basic monument. Land which is laid out in the crazyquilt pattern so common in the areas outside of the government survey, and more or less common everywhere, may or may not have an accurately located starting point. In the case of the rectangular tracts which generally prevail in the areas covered by the government survey, there is in all cases a very definitely located and monumented point of intersection of a meridian and a base line though usually at a very considerable distance from the subdivision involved. The precise location of the point to which the subdivision is immediately tied is often a disputable matter, and ascertainable by relocation only from more or less distant government corners.

Not only will it be very desirable if the corners of each tract of land can be eventually designated by coordinates based upon the close and absolutely definite monuments of the geodetic survey, as advocated by Prof. Kissam, but it would be of great advantage if we might have located in the immediate present one corner of each private plat and of each section of the federal and state surveys. Preliminary also to a general application of the system, such public and semi-public monuments as state highways and railroad rights of way could be located by and referenced to these coordinates.

For those interested in a further study of the matter reference is made to New Jersey Laws 1935, chapter 116 and to the May, 1935, Geodetic Letter issued by the United States Coast and Geodetic Survey. This latter contains a form of act proposed for adoption by state legislatures, a suggested form of description using coordinates, a copy of the New Jersey act, copy of a proposed bill for a Florida act, and comments by various contributors.]

INADEQUATE, archaic and inaccurate, are adjectives which may be applied to the present methods in constant use for describing property. They cause disputes, delay construction, and injure the title of the real estate involved. The economic loss and damaged confidence chargeable to this cause is considerable. The transfer of property incurs difficulties out of all proportion to its value in comparison with the transfer of any other form of wealth. Although apparent in a variety of forms, the underlying cause for this state of affairs can usually be traced to the lack of a proper method of marking the ground.

It is unnecessary here to call attention to the chief principles involved in the current method of determining the actual location of property lines. The vendor *by some means* indicates the land he wishes to sell, and the buyer demands a particular description of the property, together with a deed, in the hope that he may thereafter claim ownership of the parcel of land which he purchased.

Although often forgotten, it is the function of the buyer to demand a proper description. He should insist that a proper description be given in the deed in spite of any desires of the seller to the contrary. The desire of the seller to be in a position to with facility guarantee the property he is selling, is one of the im-

portant reasons for the antiquated methods still in use for property description, as will be shown later.

In an effort to provide a proper description, some well known land mark is usually chosen to locate the property on the ground. It might be noted that little if any effort is made to establish a direction, which is just as important as a particular location. The magnetic or arbitrary bearings, customarily used to give direction, are inadequate. The particular point chosen must of necessity be of a temporary nature. Trees, centerlines of streams, etc., are obviously temporary. Irons and monuments are lost or destroyed. Highways, street lines, and street intersections have little permanent value as they represent boundaries of publicly owned properties against which adverse possession cannot be claimed, and for this reason are not carefully watched so that their position can seldom be actually determined.

Some system is obviously necessary to permanently mark a point and a direction in the locality of the property. The Legislature of the State of New Jersey has had the wisdom and foresight to adopt a splendid method to accomplish this end, which not only has the requirements necessary, but many other advantages as well. Years ago France adopted this method. In the areas where every land mark was destroyed by war, it was possible to re-establish all property lines in exactly the same position occupied previous to the hostilities.

The chief principle involved in this system is the establishment of carefully monumented and referenced points over the entire country, interconnected by precise surveys so that the relative position of each point with respect to the entire system of points is known to a nicety. Marks of this kind have been called control points, and for their proper use should be established at not greater distances from each other than a few thousand feet. The points so established are indestructible because, in principle, even if many thousands of them should be destroyed, if but two remain, these thousands can be replaced.

When a piece of property is to be described utilizing the system there must be clearly indicated in the description, the position of the property in relation to a line established by at least two of these points. When such a condition exists, the position of the property can be determined exactly as it was originally laid out, no matter what occurrence may arise which would ordinarily make impossible such a determination. The writer believes this system might at first appear to be ideal but quite impossible of fulfillment. It might be well to illustrate how this system is being developed in the State of New Jersey.

There have been established in New Jersey, as in every state in the Union, monumented triangulation stations established by the United States Coast & Geodetic Survey. The stations are spaced at intervals of approximately 12 miles, or will be so spaced, and interconnected by the most precise type of surveying ever developed. The relative position therefore of each of these stations has been precisely determined with respect to the positions of all such points throughout the entire country. Work is now under way in New Jersey as is the case in many other states, originally begun with Civil Works Administration funds and since carried on by the Emergency Relief Administration and the Works Progress Administration, establishing many thousands of monuments interspaced between the triangulation stations and connected to them by precise traverses. These monuments are set along accessible highways and at convenient locations in towns and cities. Each one of these monuments can be reset in exactly the same position it now occupies, should it be destroyed. Many areas exist therefore where it is already possible to establish the position of property corners, with only a short survey connection.

As this system comes more into use, further monuments will be established by public funds and private surveyors will extend the system whenever they establish property corners.

Due to the multiplicity of the points a method must be adopted by which the relative position of these points can be expressed in simple terms. For this purpose New Jersey has recognized by statute a certain rectangular coordinate system. The position of each point can thus be described by the number of feet and hundredths of feet that this point lies north and east of a certain assumed origin. In order to utilize a single plane coordinate system for an area as large as the state of New Jersey, certain mathematical considerations are necessary because of the curvature of the earth. It is not within the scope of this article to do more than mention that a certain definite projection is necessary. As it would be obviously impossible to include in every property description detailed statements defining this projection, the Legislative Act defines the projection, giving it a short and definite name which can be quoted in a description.

Certain difficulties are bound to arise with the introduction of any new basic principle. It is possible and practical to describe a piece of property merely by giving the New Jersey plane coordinates of each corner of the property. With such a description no questions whatever could arise as to what was meant by the description and it would be possible always to re-locate the property corners so described. However, should a title examiner be suddenly confronted with four pairs of coordinates as a description of a city lot, he possibly would know that the lot was in New Jersey; but it would be doubtful if he would know in which county it was located, much less the town and street. This, of course, is only a temporary difficulty because once coordinates are in general use the coordinates of well known points in any town would soon become familiar to him. The intersection of 42nd St. and 5th Ave. can be assumed to be general knowledge although after all they are merely the rectangular coordinates 5 and 42. However, it is recommended that the old form of description be continued for the present with the exception that for each property corner the New Jersey plane coordinates be stated.

It has been said that the title examiner knowing only the coordinates of the corners of the property, would be unable to determine the length of the boundary lines. Such a determination can be computed by the simplest form of trigonometry, and it is a simple process to also determine the bearings of the lines. It may be necessary for some of us to recall to our minds the Pythagorean Theorem and the definition of a sine, a cosine and a tangent but this cannot be considered a serious objection. Moreover, it is well when a property transfer is considered, to plot by scale an approximate map of the property lines. With the ordinary description, a protractor is necessary. Under the

coordinate system a straight edge and a right angle are the only tools required, or if a piece of cross sectioned paper is available, the pencil alone will give the results.

Another difficulty presents itself in land surveying which, although simple in character, is not well understood even by those who continually handle real estate. The title to real estate has its original source in the State. The property of the State has been gradually and continuously subdivided until small units generally obtain. The property lines of these units are sometimes described by direct reference to land marks but more often by reference to other property lines. Often an examination of the ground proves that there is not sufficient land or there is more land than necessary for the actual property sold between lines already established by custom. The discrepancy is usually caused by the difficulty in determining the positions of the orginal lines or the positions of the points mentioned in the description. Instead of such a condition being an exception it might almost be called the rule. A man buys a piece of property; he accepts a description by the seller and later asks the surveyor to show him where his property lies. Unable to find accurately the street intersection indicated, or the boundary of the original tract from which the plot has been subdivided, or the location of the abutting properties, the surveyor is theoretically forced to get Court action to determine the positions of some twenty or thirty pieces of property in order to fulfill his commission. Adjoining parcels of land have to be considered, for only a very few of our property lines have been determined by Court. Such a program is impossible and for this reason the surveyor of necessity must make decisions for himself. He must locate the property according to his best judgment as to what the Court would decide. This decision has no legal significance perhaps, but actually it is usually accepted as final. In making his decisions the surveyor takes into account the well known principles upon which decisions have been handed down throughout the centuries, together with his knowledge of local land marks, mistakes in deeds, the location of actual buildings, and so forth. When judgment of this kind is necessary, it is inevitable that surveyors will differ. One of the objects of this Act is to eliminate the necessity for the surveyor to use his judgment and to make it possible for him to locate property using only his skill.

When the surveyor has finally marked the property according to his best judgment, the lines he has staked out do not agree with the lines in the description used to deed the land to the new owner. Both the distances and angles usually differ. Even if the buyer has had the foresight to demand a deed describing the land he is buying, and not the land the seller thinks he owns, although some confusion is eliminated, the surveyor has no means of permanently recording his findings for field use. The coordinate system would provide the means to enable him to describe his location of that property without a shadow of a doubt. That property would be a land mark for all surveys in that neighborhood.

But often the buyer has a difficult time getting a proper deed. The seller must gauarantee the land he sells. He believes that if the old description by which he bought the property is repeated in the deed he gives, he is surely deeding the property he owns. Such is obviously not the case. He cannot own what does not exist. When too little land exists to satisfy all the deeds in the locality, he is attempting to do this very thing. It might be noted that the same condition obtains when there is too much land, but the reason for this is not quite so clear. It is greatly to the interest of the buyer that he insist that the description of the property in the deed he receives be based on a new survey and that it show the coordinates of the property corners.

But it is almost impossible for a situation like this to arise when the original tract has been described by coordinates. It is a matter of simple computation to determine whether enough land or too much land exists. Common lines would have the same coordinates in both deeds so that the fact that they did adjoin could be checked mathematically. All of the data which usually can only be obtained by extensive research in the deeds, and expensive surveys on the ground are available if the coordinates are expressed.

A by-product of the use of coordinates will be the ease of making, checking and maintaining tax maps. Many thousands of dollars will be saved in their preparation alone. By utilizing the coordinates of the property corners it will be possible to place each property on the map without reference to any other description. It will not be necessary, as is now the case, to either attempt to compile mosaics of descriptions which do not fit each other, nor to make the costly surveys now imperative.

The preparation of maps for the acquirement of property for engineering construction will be greatly aided by coordinate descriptions. At present it is necessary to make surveys of all properties in the immediate neighborhood. The process is much the same as that followed by a surveyor staking out a lot as described above. The multiplicity of separate property holdings makes this work a costly operation. When coordinates come into general use there will be no field work done which can be directly charged to this particular operation. As the survey established for the construction work will be connected with control monuments for the purpose of accuracy, the determination of the land to be acquired from individual owners will be only a matter of an office computation.

Modern thought has for some time favored the increased development of highways, parks, etc., with public funds. We will see large areas returned to the State in this way. Unless the coordinate method of description of land is adopted many thousands of taxpayers' dollars will be uselessly wasted for surveys for the acquirement of the land.

It might be well to point out the great difference between the system described and the U. S. Public Land System used for the grant and sale of the vast areas of western and southern land. The Public Land System is an index and nothing else. Like the usual method of describing land, it depends on local monuments set by the original surveyors. No attempt was made to give precision to those surveys. No triangulation or precise control was used. The surveys were made only so that the monuments could be found. The work was, of course, very inaccurate, and in fact so inaccurate that it is often difficult to find the heap of earth or quart of charcoal which served by way of monuments.

The system described is not designed to establish points at the intersection of coordinate lines as is the Public Land System. The monuments are set in accessible positions, and their location found by accurate survey nets, utilizing precise methods of surveying.

The chief use for the monumented points precisely

surveyed is not that of describing land. The system is being established as an aid to engineering surveys. Where such a system obtains, a map or plan can be made over any area at any scale with rapidity. Control monuments of this kind prepare the area for the emergencies that arise when engineering projects are under consideration and data must be quickly assembled, or in War time when accurate maps must be obtained with dispatch.

It would seem to be folly to jettison the great opportunities that this control system provides for accurate land description. It appears to the writer that it is the duty of any professional man advising a client who is a prospective buyer of real estate that he insist on a deed which includes a description in which are stated the coordinates of the property corners referred to the State system of control surveys.

Although property is permanently marked by the use of coordinates, naturally the system is no panacea for all ills. There is no way, of course, to eliminate the difficulties that arise when the survey itself is in error. It might be well to point out, however, that the system provides the surveyor with a precise check for his work, and one of the chief reasons for the great support received from practicing surveyors is this feature of the system.

Legal Ethics and Professional Discipline

STATUTE OF LIMITATIONS ON DISCIPLINARY PROCEEDINGS HELD INVALID

A STATUTE which provides that no "proceeding for the removal or suspension of an attorney at law shall be instituted unless commenced within the period of two years from the date of the commission of the offense or misconduct or within one year after the discovery thereof" was held unconstitutional by the Supreme Court of Minnesota as "an attempted projection of legislative power into the judicial department." In re Tracy 266 N. W. 88, March 27, 1936. The invalidity of the statute must follow, the court says, from the well-settled proposition "that a court which is authorized to admit attorneys has inherent jurisdiction to suspend or disbar them. This inherent power of the court can not be defeated by the legislative or executive department."

The statute is unconstitutional for the further reason that it provides a "rule of evidence" which limits the power of the courts to determine for themselves what evidence to consider in disbarment proceedings. "We do not prosecute attorneys by subjecting them to discipline. . . . Our enquiry is into their professional conduct and the question for decision is whether or not the character thereby evidenced is such as to demand discipline. Hence what the legislature inadvertently has attempted is to declare that we can not consider as evidence any conduct of an attorney except such as occurred within the stated and rather short period. There could be no more obvious attempt to say what judges should and should not consider as evidence in a controversial matter, the decision of which the Constitution, by the departmentalization of the powers of government, has delegated exclusively to the courts."

A VIGOROUS STATEMENT OF THE LAW BY THE CALIFORNIA SUPREME COURT

The position of a court when it is called upon to take some disciplinary action against an attorney whose misconduct is flagrant and unquestioned is well-stated in a recent opinion by Judge Conrey of the Supreme Court of California in the case of Roark v. The State Bar of California, 91 Cal. Dec. 479, 55 P. (2nd) 839, March 20, 1936. The court states that there was abundant evidence that the petitioner, Roark, had, as an attorney for the guardian of an incompetent person, converted estate funds to his own use, converted fees awarded to the guardian, wilfully misrepresented material facts to the court and the like. The court then says:

"The above discussion leaves but one further question for consideration: Should petitioner be disbarred, or should he be subjected merely to some form of discipline?

"The license to practice law as an attorney and counselor is a certificate of good moral character. It is a representation by the court, speaking as of the date of the license, that the licensee is a trustworthy person who reasonably may be expected to act fairly and honestly in the practice of his profession. Thereafter, in the absence of proof to the contrary, the original representation exists as a continuing presumption. The relations between courts and counsel are and must be those of confidence, and not of suspicion. But when charges of misconduct have been made and proved in a disbarment proceeding, the original representation has fallen, and with it the presumption becomes dust and ashes. There are, as every one knows, many lapses from high standards, due to human frailty, which may be overlooked, or visited with mild punishment. The numerous instances of discipline by way of suspension or reprimand have shown the reluctance with which the disbarment penalty is imposed.

"But when in a disbarment proceeding it is established by evidence amounting to proof, that an attorney and counselor has deliberately been dishonest in dealing with the affairs of his client; and has violated the duty which he owes to 'never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law' (sec. 282, subd. 4. Code Civ. Proc.); and when judgment of the Supreme Court is invoked upon such facts; then a refusal to order disbarment amounts to a renewal of the original license, and is a declaration that in spite of his own record, the attorney is fit to be offered to the public as one who safely may be trusted. In this case the court has no reasonable alternative. The petitioner has disbarred himself."

ADDITIONAL CANONS PROPOSED BY PITTSBURGH BAR COMMITTEE

The members of the Allegheny County Bar Association (Pittsburgh, Pennsylvania) have received for their consideration the report of their Committee on Professional Ethics which calls for the adoption of the Canons of Ethics of the American Bar Association

(with the exception of Canon Thirty-Nine) and certain additional canons as follows:

"47. It is the duty of every lawyer to state the truth, the whole truth, and nothing but the truth, in every representation of fact made by him or her to the court upon which any action by the court shall be, or is expected to be, founded; and any intentional or reckless misrepresentation of fact made by any lawyer to any court upon which any order or action of the court shall be founded, shall be sufficient cause for disciplinary measures against the delinquent lawyer.

"48. It is not the duty of a lawyer to present testimony in defense of his client that he knows to be untrue, but, on the contrary, it is his duty to decline to have any part in the production or introduction of testimony that he knows to be untrue, and no lawyer shall be a party to the suppression of any facts in any case, either civil or criminal, or to the secreting of any witnesses on either side of any case.

"49. Contingent fees are discouraged, but it is proper for counsel to accept a case on a contingent fee for a client with a legitimate cause of action who otherwise would be unable to finance the necessary litigation to enforce his legal rights. Counsel shall not employ or arrange for medical testimony on a contingent fee basis.

"50. The agreement for contingent fees should be in writing, and should not be entered into with any client who is ill as the result of bodily infirmity or injury, unless such agreement shall be approved by a close relative or friend of the client, who has no interest in the outcome of the cause of action.

"51. Ambulance chasing shall be defined to be

"(a) Solicitation of personal injury, condemnation, or criminal cases, by himself or through an employee, or any other person or agency.

"(b) Solicitation of criminal cases by arrangement with any alderman, justice of the peace, magistrate, or police officer;

"(c) Visiting persons confined in jail charged with criminal offense, with a view to offering services of an attorney, without being requested so to do by the person confined, or someone on his or her behalf, other than a prisoner in the same institution.

"(d) Dividing fees, making gifts, or paying in any manner, directly or indirectly, any person who brings to any attorney a personal injury, condemnation, or criminal case, or calls the attorney's attention to the possibility of obtaining such a case.

"Ambulance chasing is hereby declared to be professional misconduct, which will subject the lawyer found guilty thereof to disciplinary measures.

"52. No attorney shall take from any prisoner confined in any jail, workhouse, or penitentiary, any money as compensation for services rendered, or to be rendered, unless the same be first made the subject of a written agreement between the attorney and the prisoner, and a copy of said agreement be filed with the warden of the institution in which such prisoner is then incarcerated.

"53. It is particularly unethical for a lawyer to solicit a client who is already represented by other counsel. It is also unethical and unprofessional for a lawyer holding a public office to use it as a means for getting business. No lawyer shall maintain two regular, full-time offices, one inside and one outside of Allegheny County.

"54. Lawyers representing state or municipal governments or public service corporations should not attempt to negotiate settlements of any claims for property damage or personal injuries without first making a full disclosure of all the facts relevant to the subject matter nor should they permit any other person in their organizations or under their direction or control to do so.

"55. While disciplinary action is specifically provided for the breach of certain provisions of this Code, it is to be understood that a breach of any other provisions of this Code may result in the taking of such disciplinary measures as the circumstances warrant."

CALIFORNIA BAR DEFENDS AGAINST LAY ATTACKS RIGHT OF LAWYERS TO REPRESENT COMMUNISTS

The protests of several agricultural associations, which have called on the California State Bar to disbar those of its members who defend persons accused of "communistic practices," has led to an investigation and report to the Board of Governors of the State Bar. President T. P. Wittschen states the attitude of this body in a letter to the Secretary of the Fruit Growers and Farmers Convention, which appears in the California State Bar Journal for February, 1936. President Wittschen makes it clear that the State Bar does not condone criminal acts by attorneys, and that there exists both criminal prosecution and disciplinary action (if the offense involves moral turpitude) to be used in appropriate instances. He then states:

"However, your resolution does not strike at direct criminal acts by licensed attorneys. The chief matter of complaint is stated in the fourth paragraph of the resolution, which paragraph is as follows:

" 'Whereas, a certain small group of licensed attorneys of California have accepted retainers from and always appear for and represent any known Communist arrested and charged with offenses against the laws of this State and invariably inject into the proceedings in said trials propaganda and arguments in favor of Communism and in additional thereto appear before Communistic gatherings and make inflammatory and Communistic speeches and addresses.'

"To discuss the first matter of complaint, namely, that attorneys appear in court and defend known Communists. In the first place to be a known Communist is not a crime. The Communist party is a political party recognized by the laws of this State and entitled to a place on the ballot. What this expression really means is that these attorneys appear for and defend persons charged with violation of the criminal syndicalism laws or who are on trial for inciting riots, advocating acts of sabotage, or the like.

"The right of these attorneys to appear in these cases is recognized by both the State and federal Constitutions. Article V of the federal Constitution provides that no person shall be deprived of life, liberty or property without due process of law. Article VI provides that a person accused of crime shall have the assistance of counsel for his defense. Section 13 of article I of the State Constitution provides:

" 'In criminal proceedings, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf and to appear and defend in person and with counsel.'

"Section 282 of the Code of Civil Procedure provides that it is the duty of an attorney and counselor, among other things,

" 'To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, *except the defense of a person charged with a public offense.*'

"And lastly, it is required of an attorney 'never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.'

"No attorney can be disciplined because he appears and defends or continues to appear and defend a person or persons accused of crime regardless of the nature of the offense. It is one of the constitutional rights guaranteed every person on trial for his liberty to be represented and defended by counsel of his own selection. The right to such defense and the right of the attorney to be protected in fearlessly representing his client is a fundamental right. If we take that right away from one accused of one class of crime, in a short time it may be taken away from every defendant in every case. It is still the law that until conviction a defendant is presumed to be innocent. Instances

all over the country prove that in some cases courts and juries are influenced by popular clamor, which sometimes results in a denial of justice and in order to perform the duty required of an attorney he may have to espouse an unpopular cause in a hostile community. For the time being he may sometimes be the only shield between the defendant and the mob. His independence in that regard should not be restricted. On the contrary, it should be strengthened. And while he is performing his duty in accordance with the law of the land he is entitled to the full protection of the court and of peace officers and other officers of the court who are themselves sworn to uphold the law.

"The second charge involves the attitude and statements of the attorney before the court in the trial of persons accused of some of the offenses mentioned. The attorney either has or has not the right to conduct himself as he may do in a given case. If he oversteps the bounds, if his conduct to court and jury is offensive and disrespectful, if he violate his right of free speech and his inherent right to protect his client by all legitimate argument to court and jury, then the court has complete and summary power then and there to punish him for contempt, for he is by such conduct then and there in contempt of court. The power of the court so to punish is so plenary and so much more complete and speedy than the power of the bar to discipline for an infraction of this rule that it must be presumed in the trial of any case that if the trial court fails to censure an attorney for such alleged conduct, the attorney has not overstepped the bounds. The trial judge is there to see that full and complete justice is done and if he is not sufficiently outraged by the acts of which complaint is made to punish the attorney, then it is rather difficult for the State Bar after a heated trial to discipline an attorney on the general charge that in the trial of the case the attorney has violated the rule of legitimate debate and proper argument. There must be in the trial of a case freedom of speech, and this is too sacred a thing to be lightly curtailed. Voltaire is credited with having said: 'I wholly disapprove of what you say but will defend to the death your right to say it.' It was the possession of sentiments such as this which caused the framers of the Constitution to provide therein for the freedom of speech and freedom of the press.

"The third charge is that these attorneys appear before Communistic gatherings and make inflammatory and Communistic speeches. These speeches either do or do not violate the law. If their purpose is to urge their hearers to commit acts of violence, sabotage and criminal syndicalism, the attorneys themselves are guilty of crime and it is to be presumed that they will be promptly and speedily prosecuted by the public prosecuting authorities. In any event, The State Bar cannot act upon any such matter unless the specific charge involving the specific speech is presented to a disciplinary committee of The State Bar. The State Bar has not grand jury powers. It can not start an investigation to see if a crime has been committed. A charge must first be preferred against an attorney before The State Bar can compel him to defend his license to practice. That charge must be specific and cannot consist of a general sweeping indictment against attorneys who may make speeches with which we do not agree, but which, nevertheless, come within the rule of freedom of speech, and however we may disapprove of the utterance, are yet within the right of any citizen to make.

"What has been said is not an endeavor to condone any act of lawbreaking or violence or the inciting of such by any attorney. Any attorney so doing can, should and will be disciplined, but the acts complained of in the resolution are protected by constitutional guaranties which in their importance and scope far transcend the matter immediately under discussion."

COURT INVESTIGATIONS OF UNETHICAL PRACTICES UNDERWAY IN NEW YORK STATE

Acting upon a petition signed by the president of the Queens County Bar Association, the justices of the Appellate Division in Brooklyn named Supreme Court Justice Leander B. Faber to investigate "ambulance chasing" and other unethical practices in Queens County. Two lawyers were named to assist Justice Faber.

The order instituting the investigation took cognizance of the extent of the "ambulance chasing" and the well-governed system by which it is operated, including an organization of hospital employees, ambulance drivers, taxi drivers, and persons having close connections with the Police Department.

A similar investigation is under way in Rochester, New York, where Supreme Court Justice Clyde W. Knapp was authorized to make an enquiry by the Appellate Division Fourth Department on a petition of the Bar Complaints Committee of the Rochester Bar Association. The hearings, to be conducted by Judge Knapp, were scheduled to begin on April 13. The proceedings were to be secret and written opinions, undisclosed, were to be submitted to the Appellate Division.

RECENT COURT DECISIONS

Concrete evidence of the activity of some bar associations and the courts in the matter of maintaining high standards of professional conduct is found in the following decisions handed down by the courts within recent months:

In re Meck, 51 *Ohio App.* 237. Respondent suspended for one year for solicitation of personal injury cases through lay "touters."

In re Brown, (S. D. Sup. Ct.) 264 *N. W.* 521. Respondent disbarred for persistent uttering of fraudulent checks, misappropriation of client's funds, excessive filing of affidavits of prejudice against judges, and compounding a felony by using a criminal action to force a civil settlement.

In re Ostensoe, (Minn. Sup. Ct.) 264 *N. W.* 569. Respondent suspended for six months for converting client's funds, and misleading the court.

In re McClean, (Minn. Sup. Ct.) 263 *N. W.* 906. Respondent disbarred because he had been convicted of forgery.

Johnson v. State Bar of California, (Calif. Sup. Ct.) 52 *Pac.* (2d) 928. Respondent suspended for three years because he aided in setting up a corporation which sent out a circular advertising his legal ability and because he refused to stop an appeal when his client so ordered.

In re Fried, 284 *N. Y. Supp.* 490. Respondent disbarred because he had been convicted of a felony.

In re Whaley, 284 *N. Y. Supp.* 85. Respondent suspended for one year for failure to pay over an assigned fee and for failure to deposit funds turned over to her for deposit by administrator of client's estate.

In re Radetsky, 284 *N. Y. Supp.* 89. Respondent suspended for six months for permitting client's case to be dismissed for inattention.

In re Newman, 284 *N. Y. Supp.* 294. Respondent suspended for six months for mingling clients' funds with his own and using them for his personal needs.

In re Ostergren, 283 *N. Y. Supp.* 615. Respondent disbarred for converting more than $4,000 of client's funds.

In re Clowe, 283 *N. Y. Supp.* 808. Respondent censored for using money belonging to client, intending to pay it over at his convenience.

In re Delman, 283 *N. Y. Supp.* 801. Respondent suspended for six months for making a false affidavit in suit brought against him by client for appropriating a collected judgment to his own use and for deliberately making himself execution proof.

Committee on Professional Ethics: ROBERT T. MCCRACKEN, Chairman; HERSCHEL W. ARANT, Secretary; JAMES F. AILSHIE, PHILBRICK MCCOY, GEORGE B. MARTIN, ORIE L. PHILLIPS, ARTHUR E. SUTHERLAND.

SOME TRIAL LAWYERS OF OTHER DAYS
I. Thomas Erskine*

By Oliver R. Barrett
Member of the Chicago, Ill., Bar

I EMPHASIZED "of other days" because I wish you to realize that if you do not hear the name of any member of our society mentioned in my paper, it is because I will speak tonight, of lawyers who lived a hundred years or more ago. Our members are too much alive to be included among those who have been so long dead.

There have been, in times past, many brilliant and successful lawyers, but the fame that follows the eloquence of the court room is short-lived and the memory of the lawyer's services seldom survives the recollection of his last client. It seems that the lawyer is destined to devote endless time and energy to the accumulation of a vast array of facts relating to a particular controversy—or in acquiring a knowledge of the details of the business with which the case may be connected—or in studying medical books, so that he may know or at least may appear to know more than the doctor whose lack of knowledge he desires to expose to the jury. Yet, when each case is concluded, he must clear his mind of all the facts that he so laboriously learned, to make way for the new accumulation of a different set of facts arising out of some other case. Much of what he learns comes to be but dusty rubbish.

And what about questions of law? I need hardly remind *you* that a considerable portion of the lawyer's business life is devoted to never-ending investigation and argument—I might almost say bickering and strife—as to what the law is. Thus it is that while every layman is conclusively presumed to know the law, that presumption seems to be denied the lawyer. If you don't think so, just try it on the judge. So, it is, that however great an influence the lawyer may exert in his own time, he is soon forgotten, or at best, lives only in the legends of the bar. An exception to this rule was Thomas Erskine—the foremost forensic advocate, and the greatest trial lawyer that ever stood before a jury.

Thomas Erskine was a lawyer who, in time of great national peril, did more to preserve the liberties of the citizen and the freedom of the press than any other man in England. He ultimately rose to the office of Lord High Chancellor, yet, with the receding years, his title as Chancellor has become dimmed and almost forgotten in the radiance of his reputation as the ablest trial lawyer of all time.

On the 10th day of January, 1750, in a small, ill-furnished room in the upper flat of a lofty house in the city of Edinburgh, Thomas Erskine was born. The youngest son of an indigent earl, his father was unable to provide him a college education, and at the age of 14 years, he entered the navy as a midshipman. For four years he served, mostly in the West Indies and on the American Coast, when seeing no immediate prospect of promotion, he quit the navy. His father dying about this time, left him in possession of a small patrimony, which he invested in the purchase of a commission as ensign in the army. For six years he served, moving from post to post. At the age of 20, he married.

In the spare time of his army life, he read and reread Milton, Shakespeare, Dryden and Pope. His reading in this period served in lieu of a college education and had a marked influence in forming his style and diction in after life.

In 1774 Erskine, then 24 years of age, attended a trial merely out of curiosity. Lord Mansfield, who was on the bench, noticing the young officer in his regimentals, inquired his name. It happened that Mansfield was a relative of the Captain of the ship on which Erskine had served in the navy, and on learning his identity, Mansfield invited him to a seat on the bench. During the course of the trial, it occurred to Erskine that he could have argued the case better than the lawyer who presented it, and he conceived the idea that it might still be possible for him to change his profession. This he communicated to Lord Mansfield, who advised him to consult with his relatives before undertaking so important a step.

Erskine laid the matter before his mother. Her pride in her son prompted her to tell him by all means to become a lawyer and she predicted that if he did, he would become Lord Chancellor. He adopted her advice and fulfilled her prophecy. At the age of 25, in April, 1775, he entered as a student at Lincoln's Inn in the three years' course then required for admission to the bar and at the same time matriculated at Cambridge. With the proceeds of the sale of his commission in the army, and some financial assistance from his friends, Erskine struggled along through three years of study with a growing family dependent upon him for support. He was admitted to practice in July, 1778.

Soon after his admission to the bar, he secured his first retainer, a fee of one guinea, in the case of Captain Baillie, who had been ruled to show cause why he should not be prosecuted on a criminal information for libel. Baillie, the Lieutenant Governor of Greenwich Hospital, a charity for disabled seamen, had charged corruption in the administration of the hospital, which was under the control of Lord Sandwich, the First Lord of the Admiralty. In a petition circulated by Baillie setting out the abuses, it was intimated that they resulted from the fact that Lord Sandwich had introduced Landsmen into the hospital for election purposes. Lord Sandwich had instigated the proceedings against Baillie, although he did not openly appear in the prosecution or on the record.

Erskine, in his argument, in behalf of Baillie, pointed out the ill-treatment of the old soldiers and the abuses perpetrated in the hospital and argued that if a loyal officer, such as Captain Baillie, be punished for calling attention to corruption in the administration of the hospital, it would inevitably lead to the suppression

*First installment of a paper read before the Society of Trial Lawyers, Chicago, at its meeting Thursday evening, April 2, 1936. The second and final installment will be printed in the next issue of the Journal.

of criticism and the increase of corruption in the administration of public charities.

The venerable and respected Lord Mansfield sat upon the bench. For more than a quarter of a century his word had been law in the court. When Erskine, in his argument, came to speak of the first Lord of the Admiralty, Mansfied attempted to check the young lawyer by reminding him that Lord Sandwich was not before the court. Whereupon this undaunted young advocate replied:

"I know that he is not formally before the court; but for that very reason I will bring him before the court. He has placed these men in front of the battle, in hopes to escape under their shelter, but I will not join in battle with them. Their views, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with them. I will drag him to light who is the dark mover behind this scene of iniquity. I assert that the Earl of Sandwich has but one road to escape out of this business without pollution and disgrace; and that is by publicly disavowing the acts of the prosecutors and restoring Captain Baillie to his command. If he does this, then his offense will be no more than the too common one of having suffered his own personal interest to prevail over his public duty, in placing his voters in the hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience that crowds this court; if he keeps this injured man suspended, or dares to turn that suspension into a removal, I shall then not scruple to declare him an accomplice in their guilt, a shameless oppressor, a disgrace to his rank, and a traitor to his trust."

His client was acquitted, the rule was discharged, and as Erskine passed out of court, more than twenty retainers were pressed upon him by the attorneys who had listened to his impassioned eloquence and wished to employ him to plead their cases. From that time there was no lack of cases for Erskine, and almost overnight he acquired fame as a trial lawyer.

His argument for Baillie was as perfect a legal argument as could have been presented, yet it was the first effort of an unknown lawyer, just called to the bar, unpracticed in public speaking, whose life had been spent mainly on a man-of-war or in the barrack-rooms of a regiment. His speech in any time or under circumstances must rank as a matchless effort—one that can scarcely be explained any more than the genius of Shakespeare can be explained.

Erskine in later life related that when he had received this first retainer, "he had scarcely a shilling in his pocket," and when asked how he had dared face Lord Mansfield with so bold a front, he replied, that it seemed to him as though his little children were plucking his robe and saying to him, "Now, father, is the time to get us bread."

It is worthy of note that his brother, Harry Erskine, was for forty years the leader of the bar in Scotland, while Thomas Erskine retained his precedence in England. Of Harry Erskine, a single incident will well serve to illustrate his character. On an occasion when an eminent Englishman, visiting Scotland, expressed his doubts as to the possibility of a poor man obtaining justice in the courts, he was answered by a Scotchman, "We dinna ken what ye say mister. There's nae a puir man in Scotland need want a friend or fear an enemy while Harry Erskine lives."

Shortly after the Baillie case, Thomas Erskine assisted in the defense of Lord Keppel, and in that case he received a fee of 1,000 guineas.

His first argument of importance before a jury came in 1781, in defense of Lord George Gordon, who was charged with high treason in levying war against the king by inciting the "No Popery" riots of 1780, of which you have no doubt read in Barnaby Rudge.

In the reign of William the Third, a statute was passed prohibiting the teaching of the catholic religion and providing for forfeiture of the estates of catholics.

Lord George Gordon, the President of the protestant association led a mob of about 40,000 people to the House of Commons to present a petition protesting against the repeal of the act. Gordon, who was himself a member of the House of Commons, was informed that all members of the House were armed; that they would not be intimidated by a mob, and that if his men attempted to come inside, there would be bloodshed. Colonel Gordon, who was then in the House of Commons, told Lord Gordon, his near kinsman, that when the first member of the mob crossed the threshold of the House, he would plunge his sword not through the invader but through Lord Gordon's body. Gordon then spoke from the balcony and urged the mob to be peaceful. A vote was taken and the petition was defeated by an almost unanimous vote. Soon the mob got out of hand. They burned the prisons of London and turned the criminals loose, who with others in the general contagion of drunken frenzy joined in pillaging and in setting fire to public buildings and private homes.

Lord Mansfield's house and his fine collection of paintings, and books and notes of cases were destroyed. After being roughly handled by the mob he escaped. Above 400 people were killed and there was an immense loss in the destruction of buildings and property.

Lord George Gordon endeavored though unsuccessfully to assist in quelling the rioters. He was indicted for high treason in levying war against the king, and Erskine defended. In his argument he maintained that since Lord Gordon had no intention of committing any crime in assembling the petitioners, he should not be charged with the fatal results that occurred after the petitioners had turned into a destruction mob; that to hold him guilty of constructive treason would be contrary to the Constitution of England and the principles of justice.

The prosecution was conducted with all the powers of the crown. Lord Mansfield who had been so ill-treated by the mob, presided at the trial and his instructions were not favorable to the prisoner, but Erskine secured an acquittal. Of his argument on this trial which occurred only a little more than two years after he was admitted to the bar, Lord Campbell says, "Here I find not only great acuteness, powerful reasoning, enthusiastic zeal, and burning eloquence, but the most masterly view ever given of the English law of high treason—the foundation of all our liberties."

And Samuel Johnson, who seemed to have had something to say on almost every subject, said "he was glad that Lord George Gordon had escaped rather than that a precedent should be established for hanging a man for constructive treason."

One of Erskine's important cases was the defense of the Dean of St. Asaph, who was charged with criminal libel against the government by reason of some statements which were contained in a pamphlet he had published. Erskine contended on the trial that the jury should pass upon the whole question of guilt or innocence of the accused. The judges, following the rule long established by precedent, held that the jury could pass only upon the question of whether the defendant published the pamphlet (which was not contraverted) and that it was for the judges to say whether

the statements in the pamphlet constituted a libel. The jury found by the verdict that the defendant was guilty of publishing only, and when the verdict was returned, a controversy arose between Erskine and Justice Buller (with whom Erskine had first studied law), who said to Erskine, "Sit down, sir. Remember your duty, or I shall be obliged to proceed in another manner." To which Erskine replied, "Your lordship may proceed in what manner you think fit. I know my duty as well as your lordship knows yours. I shall not alter my conduct." And this reply the judge allowed to pass unnoticed.

Erskine twice argued at great length a motion for a new trial. The judges listened to his argument with indifference and aversion, and Chief Justice Mansfield, in his opinion denying the right of jury to pass upon the question of the libel, referred to the fact that the judges could not be moved from their duty by popular declamation. Erskine, however, was not only arguing for the judges but to arouse the public to the understanding that the rule enforced by the court was an invasion of the freedom of the press and of the right of trial by jury.

So many changes have come about that to appreciate the situation of the lawyer in those times, it is necessary to recall that one of the most important means of communication of ideas was through oratory, political or forensic or just plain oratory. They had no radios—no movies—no telephones, but plenty of orators and the lawyers were particularly adept when it came to making speeches. The court rooms were crowded with those who came to listen to the dramas and comedies of real life and in the case of important trials by famous lawyers, the speeches at the bar were printed in pamphlet form and circulated throughout the nation.

After the motion for new trial had been overruled, Erskine argued a motion in arrest of judgment and was successful in staying the verdict on the ground that indictment was faulty. But the widespread circulation of Erskine's arguments on the right of trial by jury led to the enactment of a statute taking from the judges and restoring to the jury the right to determine the question of intent in cases of criminal libel.

Probably the most important case tried by Erskine was *The King v. Hardy*. Hardy had been indicted for high treason for attempting to encompass the death of the king. The prosecution grew out of the conditions of the turbulent times following in the wake of the upheaval in France.

About the time of the French Revolution, a number of societies were formed in England and Scotland which pressed for new policies of government and for reforms in Parliament. The King and government, terrified at the excesses of the French Revolution and fearful of the spread of the disastrous events that had led to the subversion of the throne of France, the slaughter of the Royal Family and the deluging of that country with the blood of its people, grew jealous even of the liberties and privileges granted by the Constitution. Parliament suspended the writ of habeas corpus, provided for imprisonment on suspicion without bail and resorted to the law of constructive treason. And it was asserted that the societies demanding the reforms were seeking to bring about a revolution and that all who belonged to these societies were attempting to compass the death of the king. Thus the government endeavored to strike a blow which would place at its absolute mercy the life of every man who became a member of the obnoxious societies. The attorney general was directed to proceed against several of the more conspicuous members with prosecutions for high treason. The lives of the subjects, and the liberties of the country were involved in the issue. Had a conviction been obtained in the first case tried in England, the consequences might have been most fatal. Already excited by the reflection of the flames of the revolution in France, it seems reasonably certain that if the government had been successful in securing convictions, the spectacle of the bloodshed of the resulting executions would inevitably have aroused the nation to revolution.

The first case that came on in what was intended to be a long series of prosecutions was *The King* against *Thomas Hardy*, the secretary of one of the societies. Erskine defended. Never before had the government exerted more frantic efforts to secure a conviction and perhaps never in the judicial history of England did so weighty a duty devolve upon any one man as upon the counsel for the defendant. In accordance with the ethics of the profession, in all cases of high treason, where he defended, Erskine's services were given without retainer and without fee.

In previous cases where, at the direction of the ministry, an individual had been prosecuted in England for high treason, it was seldom that the victim had even a slight chance of escape. Indeed, previous to the Hardy trial, no prosecution for high treason had extended beyond a single session of the court, and the judges were not inclined in the Hardy case to permit any unnecessary leisure to counsel for the defense in their presentation of the case. The sessions were from nine o'clock in the morning till midnight daily and Saturdays as well.

The wheels of government prosecution had begun to turn even before Erskine entered upon the Hardy trial, and the black cart drawn by a white horse had already carried Robert Watt the first victim, to the scaffold. Some members of an Edinburgh society had been there indicted for high treason, and on the trial, the letters written by Thomas Hardy, secretary of the London society, had been received in evidence against them. The jury returned a verdict of guilty. The sentence of the court, as it is written in the Reports of State Trials, was:

"The Court doth adjudge, that you, and each of you, be drawn upon a hurdle to the place of execution; that you be there hanged by the neck, but not until you are dead; and that being alive, you, and each of you, be cut down, and your bowels taken out, and burnt before your face. That each of your heads be severed from your bodies; and your bodies divided into four parts; and that your heads and quarters be disposed of as the king shall think fit: and so the Lord have mercy upon your souls!"

Less than a fortnight after the execution of Watt, the trial of King v. Hardy was begun on Tuesday, October 28, 1794. All the evidence upon which Watt had been convicted was admitted in the Hardy trial. The evidence for the prosecution continued until they adjourned at two o'clock Saturday morning. Erskine pointed out to the court that he had had no time to look at his notes or to read the books and documents that had been admitted and asked the court to adjourn until Saturday noon so that he might have time to prepare his argument.

Lord Chief Justice Eyre was opposed to any change of the hour for convening but at the request of a juror, he consented to the adjournment and on Saturday afternoon Erskine, in an argument consuming seven hours, presented what was probably his most

important legal argument before a jury. He contended that since Hardy was charged with high treason in encompassing the death of the king, he could be convicted only upon proof of an intent to accomplish the king's death; that the effort of the government to secure a conviction without proof of the unlawful intent of the individual on trial, was an attempt to enforce the law of constructive treason, was unconstitutional and an infringement upon the rights of the citizen. The constitutional question was indeed a difficult one. The Constitution of England is unwritten, its only professed object is the general good of the people, and its only foundation, the general will.

Erskine sought to impress upon the jury that the exercise of arbitrary power by the government was not only contrary to the welfare of the subjects but by alienating their affections, would weaken the government itself.

It is interesting to note that Erskine pointed to the loss of the American colonies to Great Britain as a result of the wrongful exercise of arbitrary power. Calling attention to the fact that England had taxed the colonies not to secure revenues for the support of the mother country, but for raising a fund for the purpose of corruption for maintaining the tribes of "hireling skipjacks," against which taxation the colonies had every reason to rebel, and that through this misuse of arbitrary power, the King had lost "the imperial crown of America."

Erskine in his argument boldly maintained that regardless of acts of Parliament or of the precedents in trials for high treason, it was the duty of the jury to find the defendant not guilty, unless they were convinced beyond a reasonable doubt of a criminal intent on the part of Hardy to compass the death of the King. The rule of reasonable doubt he explained as "such evidence as a reasonable mind will accept of as the infallible test of truth." His argument proceeds:

"The rules of evidence as they are settled by law and adopted in its general administration are not to be overruled or tampered with. They are founded in the charities of religion, in the philosophy of nature, in the truths of history and in the experience of common life! And whoever ventures rashly to depart from them, let him remember that it will be meted to him in the same measure, and that both God and man will judge him accordingly.

"These are arguments addressed to your reasons and consciences, not to be shaken in upright minds by any precedent, for no precedent can sanctify injustice; if they could, every human right would long ago have been extinct upon the earth. If the State trials in bad times are to be searched for precedents, what murders may you not comm't, what law of humanity may you not trample upon, what rule of justice may you not violate; and what maxim of wise policy may you not abrogate and confound? If precedents in bad times are to be followed, why should we have heard any evidence at all? You might have convicted without any evidence, for many have been so convicted and in this manner murdered even by acts of Parliament."

The jury returned a verdict of not guilty. The government immediately proceeded with the prosecution of Horne Tooke, but Erskine presented the same defense and the jury again returned a verdict of not guilty. The third case arising out of similar facts, The King v. Thewall, was defended by Erskine, and in that case also Erskine secured the acquittal of his client.

For the government it was three strikes and out, and Erskine had tolled the death knell of the doctrine of constructive treason.

In times of peace, a lawyer cannot do much for his country nor for the people in general, other than such services as he may render to his client by freeing him from unjust charges in a criminal case or securing his property or rights in a civil case, but in times of stress when the whole power of the government and Parliament is bent upon crushing a humble citizen like Hardy, the shoemaker, then can the lawyer, who stands for the rights of the individual against the powers of government, perform a real service.

No more will I quote from Erskine's speeches. The high standing of the members of this organization at the bar is sufficient assurance that you must be familiar with the splendid arguments of Erskine, whose fame is a part of our common professional heritage and an incentive to the aspirations of every trial lawyer.

As an instance of Erskine's devotion to what he conceived to be his duty, I should mention the prosecution of Thomas Paine for the publication of his second part of the "Rights of Man," in which the government of England was ridiculed. Erskine was retained. He was personally opposed to the doctrines of Paine, but his sense of duty as an advocate led him to accept the defense of the case. Scurrilous attacks were heaped upon him in the government newspapers and because he declined to abandon the case after the King had suggested his withdrawal from the defense, he was removed from his position as attorney general to the Prince of Wales. His defense was unsuccessful, but the integrity of his motives was later vindicated by his appointment as Chancellor to the same Prince.

When Warren Hastings was impeached, it was desired to enlist Erskine's support. Accordingly a member of Parliament resigned so that Erskine might be elected in his place. For some reason, Erskine was unable to function in that assembly in the able manner that had made him so successful before a jury. In the House of Commons his performance was tame and destitute of animation, and he scarcely reached even to the "heights of mediocrity."

In his first speech, he was to support and follow Charles James Fox. When Pitt came to answer, he merely mentioned Erskine as "the gentleman who followed his leader, weakening his argument as he went along."

When in 1803 Napoleon Bonaparte avowed his intention of invading England, a lawyer's corps was raised, which was commanded by Erskine. While the lawyers suffered no casualties, their clients were not wholly exempt if it be true as related, that when Erskine gave the order to charge, the lawyers drew forth pen, ink and paper and wrote down the charges against their clients in varying amounts according to their rank, thus proving that in charging, at any rate, the pen is safer than the sword.

In 1806 Erskine was appointed Lord High Chancellor of Great Britain, and it has been said of his services in that high office that "if they did little to advance the science of equity, they did less to retard it." When he retired from that office, the usages of the profession forbade his return to practice at the bar.

In after years, the fortune he had amassed in practice was dissipated in disastrous speculations, and the closing years of his life were harrassed by financial embarrassments and the domestic infelicity that followed an unfortunate second marriage. But whatever may have been his shortcomings or embarrassments, they were as Lord Kenyon observed but as "spots upon the sun" in the light of his services to the bar and to humanity.

It has been said of Erskine that his fiery and electric eloquence was not more remarkable than the warm

and noble impulses of his heart. That his humanity and patriotism, his indignation against whatever was unjust and oppressive, so kindled and inspired his great intellect, that he carried irresistibly the souls of his hearers along with him. That from the reflection of the fervor of his intense love of right and his vehement hatred of human wrong, the dullest heart, caught a new light and fire, so that he was able to draw verdicts from men, who without his communicated spirit would never have dreamed of the sublime heights of truth and justice to which he carried them.

There have been abler lawyers, greater judges, and wiser statesmen, but as an advocate, Erskine stands without a rival and without a peer.

PROGRESS TOWARD A MODERN ADMINISTRATION OF CRIMINAL JUSTICE IN UNITED STATES

Difficulties of Administration Which Grew up under Early Dominant Political Philosophy and the System of Judicial Determination Which Reflected It—Federal Criminal Law and Its Two Major Lines of Development—Responsibility of the Federal Government—Twelve Point Program of the Department of Justice, etc.*

By HON. HOMER CUMMINGS
Attorney General of the United States

THE subject we are to consider tonight is of such wide philosophic interest and involves so many problems of practical consequence, that I can do no more, in a brief discussion, than touch upon its fringes. That I should be speaking upon such a topic to a State conference on social service illustrates, in somewhat striking fashion, the trend of present thought in this important field. I am glad to participate in your deliberations because your organization is rightly regarded not only as one of the most forward-looking, but as one that, from year to year, has made vital contributions to the improvement of legislation and administrative procedure.

The political philosophy dominant in this country at the time of the Declaration of Independence emphasized, as of primary importance, the individual rights of man as distinguished from the requirements of organized society. It was natural that this concept should have been uppermost in the minds of our forefathers. Government, in the countries from which they came, had been largely oppressive in character. The criminal law there administered was frequently employed as a whip to compel obedience upon the part of reluctant, if not recalcitrant, subjects. Most of the early colonists came to America to escape the compulsions of arbitrary laws which seemed to them unwarranted interferences with their religious, political, and social beliefs. Moreover, the country to which they came was a wilderness in which each individual lived largely on his own responsibility. In the small clusters of population which constituted the first communities, only the most primitive forms of governmental structure were possible. Until comparatively recent years there has always been a frontier beyond which the restless could find escape. It was natural, therefore, that in the building up of our laws—particularly those which related to crime and punishment—there should have been a sharp emphasis on the rights of the individual and a constant resistance to any form of social control which seemed to involve a limitation upon individual activity.

In the early days, the scope of criminal law was relatively narrow. The prevailing conditions of life made unnecessary the elaborate present day structure of criminal statutes. Such crimes as were committed were, of course, matters of vital consequence to the localities in which they occurred. The court house was a center of community interest and court day was an occasion for the assembling of the populace from the far corners of the country. When a murder was committed it was of such general concern as to disrupt the quiet of the countryside and to warrant the calling out of all available resources for the capture and punishment of the criminal. In fact, it was a matter of such moment that, in the absence of an effective local government, vigilante groups were active and methods of hue-and-cry and outlawry were employed.

It was under these circumstances, then, that there grew up in our constitutions and laws, the system of judicial determination which we know so well and which guarantees to each person charged with the commission of a crime, the right to counsel, the right to a day in court, the right to a jury trial, the right to have witnesses subpoenaed in his behalf, the right to be tried only upon an indictment found by a grand jury, the right to bail, the right to employ the writ of habeas corpus, the right of the presumption of innocence, the right to be present at his own trial and to be faced by the witnesses who testified against him, the right to be convicted only upon proof beyond reasonable doubt, the right of appeal and the rest of the elaborate formulae. Every law student was taught that it is better for ninety-nine guilty men to escape than that one innocent man should be punished. In modern days these wholesome processes and sound guarantees have

*Address delivered at the Annual Meeting of the North Carolina Conference for Social Service at Durham, N. C., on April 27, 1936.

far too often been debauched and diverted from their original purpose.

It was but natural that we were led into many grievous difficulties of administration.

Criminal laws were frequently enacted to satisfy the wishes of interested minority groups or in response to tempests of popular emotion. Moreover, this confusion was increased by the fact that not only the federal government, but each state and each political sub-division thereof was possessed of large power to define crimes and to fix penalties.

The Federal criminal law, as a system distinct from that of the states, followed two major lines of development. One had to do with the control of territories directly administered by the Federal Government. The other body of law was concerned with such problems as treason, piracy, sedition, interference with the mails, the collection of internal revenue and other purely federal functions.

Let us not forget that the development of the United States has producd certain phenomena peculiar to ourselves which present problems of the most varied and baffling character. There came to our shores a heterogeneous population, bearing within itself national strains and racial traits that were to contribute to the cosmopolitan character of American life, but which, at the same time, could not be welded into a common pattern of behavior without subjecting our new citizens to many of the compulsions which their arrival on these shores was designed to avoid. The mere territorial extent of our domain, while affording opportunities for the assertion of the vigor of the pioneer, at the same time subjected the influence of law and order to a process of indefinite attenuation. Industrial and manufacturing communities, great centers of population and of enterprise, grew up, each with its particular texture, atmosphere and standards of public morals. Between some of these large centers the greater part of Europe might have been superimposed with room still left for an almost uninhabited frontier. There came into existence forty-eight states, each sovereign within its own jurisdiction, each with its own capital, each with its own government, and each with a population drawn together through some common interest in the natural or human advantages of its peculiar environment. The Federal Government, established through fiat on the banks of the Potomac, isolated with conscious purpose from the great centers of population, trade, manufacturing, business and industrial life, bore a relationship of limited and delicate character toward all of these other units.

Out of this relationship, fixed in our Constitution, and out of the great impulses that created the drama of our material conquest of this continent, have arisen intricate problems in the administration of human relationships that confront us all at this hour. Of these problems the administration of criminal justice is one of the most fundamental.

The dangerous inroads that organized crime was making were apparent on every hand and, finally, reached a climax in a notorious series of kidnapings that brought the issue into the focus of national attention. To put it bluntly we had outgrown our law enforcement system and it had broken down under the strain.

Many of us felt that, in the premises, a heavy responsibility rested upon the Federal Government and that means could be devised to meet it within the limitations of the Constitution, and without doing violence to the genius of our institutions or the customs of our people.

The first significant appearance of the Federal Government in this field took place when the so-called "Lindbergh" Anti-Kidnaping Act was passed in June, 1932. While this was an excellent beginning, it dealt somewhat inadequately with but a single class of crime. It was imperative that the Federal authorities should be empowered to go much further.

Between Federal and State jurisdictions there existed a kind of twilight zone, a sort of neutral corridor, unpoliced and unprotected, in which criminals of the most desperate character found an area of relative safety. It was the unholy sanctuary of predatory vice. Here the instructed criminal sought and found refuge. It was into that zone that the Federal Government has sought to enter. We have resisted, and we shall resist, all attempts to bring the Department of Justice into the sphere of State or local criminal activities. Frankly, I have endeavored to develop in the Department of Justice a structure and a technique predicated upon co-operation with state and local agencies, as well as with appropriate semi-public groups, toward the accomplishment of the common end—the eradication of crime in its more outrageous and organized phases and the progressive control of the rest.

It was, therefore, from no desire to usurp the functions of State or local authorities, that the Department of Justice requested from the Congress, and secured, authority to deal with this difficult situation. There was introduced in the 73rd Congress what has been termed the Twelve Point Program of the Department of Justice, which ultimately resulted in the passage of twenty-one important enactments.[1]

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1. The list of these statutes follows:

A. STATUTES CREATING SUBSTANTIVE CRIMES OR ENLARGING THE DEFINITION OF ALREADY EXISTING SUBSTANTIVE OFFENSES:

1. Public Act No. 230, Approved May 18, 1934, 18 U. S. C. A., Sec. 454, a, b, makes it a federal offense to kill or assault officers of specified federal investigative units, such as the Bureau of Investigation of the Department of Justice, Post Office Inspectors, Secret Service Operatives, etc.

2. Public Act No. 231, Approved May 18, 1934, 18 U. S. C. A., Sec. 408 d, makes it a federal offense to send in interstate commerce, with intent to extort, certain types of threats, such as threats to injure persons, property, or reputation, to kidnap, to accuse of crime, to demand ransom.

3. Public Act No. 232, Approved May 18, 1934, 18 U. S. C. A., Sec. 408 a, b, c, amended the Kidnap Statute so as to permit infliction of the death penalty, upon recommendation of the jury, where the victim was harmed; exempted kidnapings by a parent of the child; created a presumption that interstate commerce had been used where the victim was not returned unharmed within 7 days; and by the insertion of the words "or otherwise" after "ransom or reward," made the statute applicable to certain other types of kidnapings which involved no ransom or reward.

4. Public Act No. 233, Approved May 18, 1934, 18 U. S. C. A., Sec. 408 e, the so-called Fugitive Felon Law, made it a federal offense for a person to flee from one state to another for the purpose of avoiding prosecution for certain violent felonies, or for the purpose of avoiding the giving of testimony in felony cases.

5. Public Act No. 234, Approved May 18, 1934, 18 U. S. C. A., Sec. 252, punishes riots and escapes at federal penal institutions.

6. Public Act No. 235, Approved May 18, 1934, 12 U. S. C. A., Sec. 588, a—d, makes it a federal offense to rob banks operating under laws of the United States and provides for in-

Throughout these difficult and formative days the Congress and its committees rendered every assistance in their power; and I pay grateful tribute to them for their unfailing confidence and support.

In order to assist the States in developing a more effective program of nationwide cooperation, I sponsored the adoption by the Congress of a law authorizing interstate compacts for mutual cooperation in the prevention and punishment of crime. The passage of this law has already stimulated wide interest in a hitherto unused means of approach. An Interstate Commission on Crime has been formed, composed of members representing every State in the Union; and a comprehensive program of legislation is in process of development.

The other enactments dealt with racketeering, transportation of stolen property where the value exceeded five thousand dollars, extensions of the kidnaping statute, flight from one state to another to avoid prosecution or the giving of testimony in felony cases, bank robberies, killing or assaulting a Federal officer, riot in or escape from a Federal penal institution, taxation upon the manufacture or sale of sub-machine guns and certain other types of firearms, the right of agents of the Federal Bureau of Investigation to carry firearms and to make arrests, improvements in criminal procedure, rewards, and similar matters. These beneficial and constructive acts were carefully worked out and served as an answer to a great national need. Moreover, the Congress wisely provided additional appropriations for equipment, personnel, laboratories, scientific apparatus and the like.

The immediate result of these various acts and measures was to enable the Federal Bureau of Investigation and the Criminal Division of the Department of Justice to deal successfully with a series of outrageous kidnapings, and to put an end to the operations of many notorious murderers, gangsters, bank robbers and hold-up men, whose activities had made American justice a subject of wonder to the rest of the world. The Federal authorities confronted a desperate situation and, I am proud to say, met it in a manner that received national and even international commendation. Encouraging as these events were, thoughtful persons realized that much remained to be done.

With that thought in mind I summoned to meet at Washington, D. C., in the winter of 1934, a conference on crime, based upon a new method of approach. Theretofore the public, expressing itself through conferences or otherwise, had appealed to the public authorities for aid in dealing with the menace of lawlessness. Now the process was about to be reversed—the Government was to appeal to the public for its thoughtful advice, for its sustained interest and for its active help.

Attended by six hundred delegates, each an expert in his own field, the Conference sought to approach the question in as dispassionate, as objective and as practical a manner as possible; to consider crime in the light of the experience of the participating groups, without at the same time getting into the field of particular crimes, specialized suggestions and minute professional preoccupations.

This gathering, I believe, elicited an unusually valuable exposition of basic facts and was of great assistance in enabling the public to see the problem of crime in its broader aspects and to see it whole. Since that time a number of State conferences of a similar nature have been held. Many things are afoot. The psychology of our people has undergone a wholesome change. No longer does the public glorify the gangster. Its admiration and its gratitude go out to those who, daily taking their lives in

creased penalties where the robbery is accompanied by an assault or a killing.

7. Public Act. No. 246, Approved May 22, 1934, 18 U. S. C. A., Secs. 413—419, extends the National Motor Vehicle Theft Act to other stolen property of the value of $5,000 transported in interstate commerce, and also punishes the receivers of such property.

8. Public Act No. 376, Approved June 18, 1934, 18 U. S. C. A., Secs. 421—425, the so-called Racketeering Statute, punishes interference with interstate commerce by violence, threats, coercion, or intimidation.

9. Public Act No. 394, Approved June 18, 1934, 18 U. S. C. A., Secs. 80—83, is a general statute punishing various types of frauds against the United States, including injury to government property.

10. Public Act No. 474, Approved June 26, 1934, 26 U. S. C. A., Secs. 861—861 q, the National Firearms Act, provides for the taxation of manufacturers of and dealers in submachine guns and other specified types of weapons used principally by the criminal element; taxes the transfer by sale, gift, or otherwise of such weapons; requires that upon such transfer certain identification data, including fingerprints, be submitted; and requires the registration of all such weapons within 60 days after the effective date of the act.

B. STATUTES RELATING TO PROCEDURE:

1. Public Act No. 16, Approved May 18, 1933, 18 U. S. C. A., Sec. 556, provides that indictments shall not be deemed insufficient by reason of imperfections in form only, which do not tend to the prejudice of the defendant, nor by reason of the fact that a stenographer is in attendance before the grand jury.

2. Public Act No. 62, Approved June 15, 1933, 18 U. S. C. A., Sec. 468, brought down to date Sec. 289 of the Federal Criminal Code, which is our general conformity statute, providing for a resort to the state criminal law where acts are committed on government property in the states, which are not specifically punished by the Federal Criminal Code but which would be offenses under the state law if not committed on federal property.

3. Public Act No. 74, Approved June 16, 1933, 18 U. S. C. A., Sec. 725, empowers probation officers to arrest probation violators in any district in which the probationer is found.

4. Public Act No. 117, Approved March 8, 1934, 28 U. S. C. A., Sec. 723 a, b, c, grants to the Supreme Court of the United States the power to make rules as to all criminal cases after verdict.

5. Public Act No. 126, Approved March 22, 1934, 18 U. S. C. A., Sec. 662, b—c, provides for the removal of American citizens accused of crime to and from the jurisdiction of any officer of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction.

6. Public Act No. 180, Approved April 30, 1934, 18 U. S. C. A., Sec. 554a, 556a, requires that motions based on irregularity in the impaneling of the grand jury or the disqualification of a grand juror must be filed within 10 days after arraignment, and provides that no motion to quash an indictment upon the ground that one of the persons serving on the grand jury is unqualified shall be sustained if it appears that, after deducting the number so disqualified, 12 or more jurors concurred in the finding of the indictment.

7. Public Act No. 217, Approved May 10, 1934, 18 U. S. C. A., Sec. 587, provides that if an indictment is found defective in one term of court, to which the period of limitation has expired, an indictment may, nevertheless, be returned at the next succeeding term of court following the finding.

8. Public Act No. 203, Approved June 6, 1934, 18 U. S. C. A., Sec. 420, gives congressional consent to the states to enter into compacts for the prevention of crime and the enforcement of their respective criminal laws and policies.

9. Public Act No. 295, Approved June 6, 1934, 18 U. S. C. A., Sec. 575, authorizes the giving of rewards for the capture of criminals or information leading thereto.

10. Public Act. No. 402, Approved June 18, 1934, 5 U. S. C. A., Sec. 300 a, grants power to agents of the Bureau of Investigation to make arrests, serve process, and carry firearms.

11. Public Act No. 437, Approved June 19, 1934, 28 U. S. C. A., Sec. 465, provides for the stay of habeas corpus proceedings pending an appeal.

their hands, seek to enforce the laws that are our common protection.

Public opinion has begun to express itself in many ways. It is not an opinion that impinges alone upon the Federal Government. If I mistake not the signs, it is beginning to affect all governmental authorities throughout the nation, whether their jurisdiction be great or small. There is a demand for action in each particular jurisdiction, for the most expert coordination of which the authorities are capable. These large expectations should find an unreserved welcome on the part of law-enforcement officials, for there is thus provided the encouragement and stimulation necessary to such an administration of justice as befits the dignity of American life.

With respect to the practical recommendations of that Conference, time does not permit me to offer a discussion, except to state that one of the important actions taken was that approving the establishment at Washington, D. C., of a scientific and educational center to provide national leadership in the broad field of criminal law administration and the treatment of crime and criminals. The Advisory Committee which I appointed to consider this recommendation approved the creation of the proposed center within the structure of the Department of Justice, and it was decided to use the existing facilities of the Department for this purpose.

For several years, under the guidance of its skilled Director, Mr. J. Edgar Hoover, there had been in successful operation in the Federal Bureau of Investigation an excellent training school for the instruction of Special Agents whose high personnel standards are too well known to require comment on this occasion. It was decided to make that training course, with suitable adaptations, available to selected law enforcement officials throughout the United States.

The first Police Training School was held in the summer of 1935, and a second group of law enforcement officers was graduated a short time ago. Plant, technical equipment, scientific facilities, lecturers, and instructors are made available for this important work. The sole expense to those who take these courses is the cost of transportation to and from Washington, and of personal maintenance during the period of instruction. The Department cannot, of course, offer these advantages indiscriminately, but it can and does undertake to supply to a limited number of experienced police officials instruction in all of the manifold scientific and technical subjects in which Special Agents of the Federal Bureau of Investigation are now trained. In this way we both teach and learn.

We have followed the subsequent careers of the graduates of this school. Many of them, promoted in rank and given increased compensation, are now passing on this instruction to their colleagues and subordinates in various State and local police jurisdictions. The results, thus far, have been highly satisfactory.

Under the Federal Bureau of Prisons of the Department of Justice there has been set up a classified prison system which includes a reformatory for women; two reformatories for youthful first offenders; a special institution for the treatment of narcotic addicts; the United States Hospital for Defective Delinquents at Springfield, Missouri, where remarkable rehabilitative work is being done with the insane and tubercular as well as those suffering with chronic, degenerative diseases; four regional jails; five prison camps; four walled penitentiaries and finally, on Alcatraz Island, a maximum security prison for persistently intractable prisoners and those with serious records of violent crimes. Supplementing the classification program there is a carefully conceived procedure for the individual study and treatment of inmates in each institution.

In the selection of personnel, both at Washington and in the field, the Federal Bureau of Prisons has recognized the importance of professionalizing the service. A comprehensive plan of in-service training for the custodial officers is now being put into operation and in the future all promotions and salary raises will be made upon the basis of the completion of the training requirements as well as the maintenance of satisfactory service records. Not only does the proposed scheme offer an opportunity for developing the best qualities in candidates for the position of prison officer, but it also assures to them something in the nature of a career service.

This training course for Federal prison officials now maintained under the experienced direction of Mr. Sanford Bates, Director of the Federal Bureau of Prisons, can, I hope, be made available under proper conditions to selected State and other officers in this field. While this is a difficult arrangement to work out, it is being given serious study.

Probation, as a device for penal treatment and for the protection of society, has been widely developed under the Federal system and with increasingly satisfactory results. Although the appointment of probation officers is, under the law, left to the discretion and authority of the United States District Judges, the administrative, instructional and inspectional phases of the probation system as a whole have been placed under the Director of the Bureau of Prisons on whose staff there is a highly competent Supervisor of Probation.

Persons sentenced in the Federal Courts to terms of more than one year are, under the law, eligible for parole when they have served one-third of the full sentence. The decision as to whether parole shall be granted, and when it shall be effective, rests with the United States Board of Parole, consisting of three members appointed by the Attorney General. The Board has its headquarters in Washington, but regular hearings are held at the various institutions.

In general, it may be said that parole is granted when, in the judgment of the Board, a prisoner is competent and willing to readjust himself socially and when the factors which will affect him and his family after release guarantee adequate public security. A definite "parole plan," which includes suitable employment and an approved "local adviser" together with such other conditions as the Board thinks necessary for the protection of society, must be submitted for the approval of the Board before release on parole is actually effective. The details of all such parole plans must be verified by field investigations made by an accredited social service agency or by a United States Probation Officer.

One of the most important phases of our crime problem is that of the care and treatment of juvenile offenders. Under a Statute passed for that purpose, there has been established a special policy for dealing with those under nineteen years of age who violate Federal laws. A person trained and experi-

enced in the work of dealing with youthful offenders has been assigned to the further development of this policy. Distinct and gratifying progress is being made in this field, the importance of which cannot be over-emphasized. If we can perfect our own system it will have a stimulating effect in every State in the Union.

There has been much discussion as to the relative merits and results of various methods of parole. Unfortunately we suffer from a woeful lack of reliable information.

Because of the variations existing among the statutes and practices of the several jurisdictions, I became convinced that a nation-wide survey should be made and that it should also include within its scope pardon, probation, commutation, suspended sentences and related subjects. With these considerations in mind I procured funds for such an inquiry from the Works Progress Administration. During the following weeks, under the direction of Mr. Justin Miller, a former President of this Conference and a member of the staff of the Department of Justice, a group of trained workers was sent into the field to initiate the undertaking. Such a survey has never heretofore been undertaken. It is in the nature of a large but promising experiment. We are receiving excellent cooperation in the various States and the compiled results will be made available to all who are interested in the subject. Perhaps, at last, we are in a fair way to come to grips with the vexing problem of parole.

I am persuaded that as time goes on our national program must place an increasing emphasis upon crime prevention. Here is a great field which many people, either because of inadequate information or lack of imagination, are reluctant to enter. In this area, as in the matter of detection and apprehension, as well as of punishment and rehabilitation, the Federal Government owes a duty of leadership. With only a moderate extension of activities, the Department of Justice can be made a nerve center of helpful impulses and a clearing house of useful information. The chief reliance however, will naturally be placed upon scientific groups, universities and training schools, many forms of industrial, business and social agencies, and the States and local governments. Here again co-operation is the key word if we are to have a unified and co-ordinated program.

During recent months there has been a tremendous increase in the activities of various agencies all along the line. In several universities courses of training have been provided for improving the personnel of police administration. Chambers of Commerce and municipal leagues have been engaged in similar programs. Fraternal and religious organizations, women's societies, the Boy Scouts, and other groups have been helpfully active. The movement to establish and extend boys' clubs, playgrounds and the like is in line with the desired end. The American Bar Association, as well as the various state and local Bar Associations, have been carrying on an intensive program, particularly for the improvement of laws relating to procedure and administration. The important work of the American Law Institute in the preparation of a model code of criminal procedure is one of the most striking of recent achievements.

The American Judicature Society, the American Institute of Criminal Law and Criminology, the International Association of Chiefs of Police, the National Probation Association, the American Prison Association and many other organizations have made substantial progress in forwarding their respective programs of action. The creation of juvenile courts and co-ordinating councils, proposals for State Departments of Justice, and State police departments all merit careful attention and promise rich results. In short, we are slowly but surely developing a national program and an adequate public leadership.

When one speaks of leadership, one speaks, perhaps, of the most essential single factor in our entire program. On another occasion I made this assertion:

> "Much has been said about the importance of an informed public opinion. This aspect of the matter is not for a moment to be underrated; but all too often public officials are content merely to lecture the citizen for his alleged indifference to the duties which inhere in citizenship. This seems to me to be somewhat less than fair and an altogether too convenient escape from the responsibilities which rest upon the public officials themselves. Our people have placed such officials in key positions of power and trust, and have a right to expect that their high responsibilities will be faithfully and efficiently discharged.
>
> "Our experience has shown that what might have appeared to be public indifference was, largely, the apathy of the disillusioned, resulting from the frequent failure of public authorities to supply the service and the type of leadership to which the American people are entitled. Once a reasonable course of action has been projected, and representatives of Federal, State and local interests have been brought together for concerted action, public opinion is inspiringly spontaneous in its support of the common objective."

There is no magic formula for the solution of the problem of crime, and, with our human frailties, no perfect administration of criminal justice is apt to be devised. But all of us, each in his own field and each maintaining cooperative contact with the others, can contribute to our common purpose. That objective, if I understand the temper of the American people, is to put into effect a program for crime control scientifically conceived, broadly based and adapted to modern conditions of life and government.

Such a program must include, among other essential elements, compassion for the unfortunate, instrumentalities to guide those in danger of anti-social contaminations, solicitude for first offenders, rehabilitation where rehabilitation is possible, progressively improved procedures, prompt detection and apprehension followed by the swift and inevitable punishment of the guilty, vigorous and understanding administration, unfaltering resistance to political interference, and the raising of the personnel in this great field of human relationships to unimpeachable standards of individual character and professional competence. Without such a program to guide us, progress, at best, will be intermittent and wavering, but with its aid the American people can put their house in order and go about their ways of living under conditions of domestic peace.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

CONGRESS, the Constitution, and the Supreme Court, by Charles Warren. New Revised and Enlarged Edition. ix, 340. Boston: Little, Brown and Company. 1935.—The first edition of this book was published ten years ago. Since that time, a good deal of water has flowed under the bridge, and the author has sought to make such additions and emendations as seemed desirable. The original text has been only slightly modified; but there are added to the volume about forty pages. The last case listed is *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555. Extended review is not or at least should not be necessary. It is an incomparable treatise in explanation and defence of judicial authority. The contents ought to be known by speakers and writers who think they know the subject concerning which so many are expressing opinions in these hectic days, as well as by the few who know they don't know.

The author might well have given a few more sentences to a consideration of the pronouncement frequently made that, though British courts have no power to declare parliamentary acts void, civil liberties are safe in Britain. He does point out the need of judicial review in a federal state as distinguished from a unitary state, but he might well have shown that parliamentary power in fact is and has been checked by traditions of free government which were built up through the toil, struggles and suffering of the past. We need not hesitate in our examination of institutions to realize the effect of long-operating historical forces. And the trouble is now, that in this country political tradition, long established practices, and affectionate respect for the accomplishments of the past are endangered by impatience engendered by serious social and economic difficulties. It takes more than formal institutions to make freedom and democracy living realities. Every country needs conservation even if it scorns conservatism; and perhaps a democratic country needs it most of all.

The author's defence of the Court's power and his objection to the various proposals to modify its authority or structure are based on wide research as well as on acute argument. Some of these matters should receive the particular notice of the reader, for it is difficult or impossible to find elsewhere materials so well chosen or the case so strongly and ably presented. His discussion of proposals to provide a court, in which only a considerable majority of the justices—six or seven of the nine—can pronounce an act void, deserves special attention; and of interest in this connection is this statement: "Thus it appears the whole complaint against the Court for its five-to-four decisions in cases holding Acts of Congress unconstitutional rests on a record of only ten such cases in 146 years" (p. 277). Noteworthy too is the brief treatment of the Court's power to curb executive authority. That this power is of importance and rests on no more *explicit* provision of the Constitution than the power to pronounce legislative acts void does not seem to appeal to those persons who are demanding legislative omnipotence. Nor do those persons contemplate the fact which the author briefly discusses and illustrates by cases: viz., that a state court can declare a congressional act void. Moreover, critics of the Court do not as a rule face the fact that, if the whole principle is wrong and is a violation of the untrammeled right of legislatures to make laws, a logical conclusion would be that state courts should abandon the practice of pronouncing state acts void; the people ought to be allowed, it would seem, to draw up constitutions containing explicit restrictions on the legislatures and leave the legislature free to ignore the restrictions at will.

No effort is made in these pages to discuss the numerous decisions by the Supreme Court pronouncing state acts void because they violated due process. During the forty years or so after 1890, the activity of the Court in matters of that kind was the chief subject of attack. But it is quite unfair to criticize the author for not doing more than he has done, and done so well; indeed, the power of the Court to pass upon state legislation is beyond the scope of the work as indicated by its title. There is, however, an additional thing to be noticed: all the cases in which congressional acts have been pronounced invalid from *Marbury v. Madison* to the *Land Bank Case* are briefly summarized in this volume. If one, taking advantage of that summary, should ask himself how many of these cases were wrongly decided and how many of them unduly hampered the development of orderly, constitutional, free government—in other words, if these decisions should be viewed in perspective,—would one find any solid and justifiable basis for impetuous disapproval of the Court and its authority? If the author could have found the space, he might well have printed at length the rules, which—to use the words of Justice Brandeis in the recent T. V. A. decision—"The Court developed, for its own governance. . . . a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision." A presentation of these rules, illustrated by numerous cases, would help to banish the notion, apparently held by some persons, that the Court eagerly enters the arena in anxiety to display its powers.

ANDREW C. MCLAUGHLIN.
University of Chicago.

The National Labor Relations Act. By William H. Spencer. Chicago: The University of Chicago Press. 1935. Pp. ix, 98.—This brief monograph was written because the author felt the need for an expression of "the public point of view" concerning the Wagner Labor Disputes Act. None will doubt the sincerity of Dean Spencer's purpose to write without the "partisan point of view" which he felt was characteristic of the other discussions of the Act that were then (September, 1935) in circulation. But, while recognizing that the author's conclusions are honestly arrived at, one might still ask whether Dean Spencer's sympathies do not incline somewhat toward the employer. The asking of the question does not imply criticism so much as it implies that there is probably no such thing as a "public point of view" of hotly controverted issues between employer and employee. One's presuppositions and general habits of thought so affect mode of expression and attempted balancing of perhaps irreconcilable considerations that the intended complete objectivity fails to be realized. At least, it fails to the extent that no one non-combatant's view should be offered as *the* public point of view. One need only compare Dean Spencer's work with that of a recent writer in the Columbia Law Review [*The Wagner Labor Disputes Act* (1935) 35 Col. L. Rev. 1098] to see how basic may be the differences in outlook of two disinterested commentators for the public. It is not intended as a denunciation of the author to say, as should also be said of the reviewer, that he is not wholly objective.

Dean Spencer's book is not presented as a full or a technical discussion of the Act; hence, to review it by extended reference to omissions or to technicalities would be unfair to the author. Yet, it may not be improper to note a few examples of what impress this reviewer as biased observation—or lack of observation.

There is, in the first place, a failure to note that the Wagner Act is not (but for its immediate predecessor, the famous Section 7-A) the first legislative recognition of inequality of bargaining power between employer and employee. Dean Spencer regards the Act as an instance of governmental "meddling" in a controversy between an employer and his employees. But if this law is considered in its proper historical setting, it will be seen that it is merely a culmination of other not wholly successful efforts to protect the weaker of two adversaries. All legislation involves interference with some individual or group. Thinking concerning the need or wisdom of the interference is not furthered by mere stigmatization of it as "meddling." The author should, in justice, remark the existence of other laws which represent a belief that there may be social justification for legislation in this field [compare, e.g., O. K. Fraenkel, *Recent Statutes Affecting Labor Injunctions and Yellow Dog Contracts* (1936) 30 Ill. L. Rev. 854.]

The author appears to feel that the Act is faulty in its supposedly sweeping condemnation of company unions, which Dean Spencer suggests may have been painted in colors blacker than the facts warrant. But the feeling is not supported by the findings of dispassionate research. If the function of a labor organization is to represent its members and not to be a mere adjunct of "the one big happy family" that industrial organizations like to think they are, then company unions, with inconsiderable exceptions, probably fail in that function. The Bureau of Labor Statistics, after a preliminary study of nearly 600 company unions, has reported that only ten of these possessed "simultaneously the attributes of dues, regular membership meetings, written agreements, contacts with other workers' organizations, and the right to demand arbitration of differences whereby the management relinquishes its absolute veto power. The total number of workers in these establishments was 6,515, or 1.2 per cent of all workers in establishments with company unions." [*Extent and Character of Company Unions: Preliminary Report* (1935) 41 Monthly Lab. Rev. 865, 866.]

Dean Spencer is disturbed by the Act's failure to protect "the worker's right of association against the interference of his fellow-workers or of representatives of unions", a protection which he thinks should be created in the same terms as that against interference of employers and their agents with the right to organize. The comment omits to notice that any active intimidation by workers or workers' agents is probably already punishable under existing penal statutes, whereas the subtler and more efficacious forms of employer pressure are not. The author's belief as to the way labor organizations "typically come into existence" somewhat explains his solicitude. In his view, "a small group of enthusiastic and militant employees. . . . in cooperation with the organizer, enlist the membership of their fellow-employees by persuasion, cajolery, and other more or less coercive means." This is also the employer's explanation of union organization, if there be added to it the comment that all the workers were contented until the appearance of an outside (possibly foreign) agitator.

The author's ultimate conclusion is that "the Act is on the whole a sound piece of legislation", though he fears that it may lead the Government to "throw its weight behind the workers in their efforts to secure concessions from employers as bases of collective agreements." He adds that "this, of course, will be most unfortunate. The government should take steps adequately to protect employees in their right to organize and select representatives for collective bargaining. It does not, however, seem to be the proper function of government to take sides with either of the two collective groups." This dictum, in the reviewer's opinion, represents a wholly naive assumption that the Government has not always taken one side or the other in the struggle between employer and employed. The Government is not "a brooding omnipresence in the sky", to adapt the Holmesian phrase. It is an instrument for the effectuation of desires or, where strengths are somewhat evenly balanced or are equally exerted, for their reconciliation through compromise. If there is a dominant public interest, of course it is the function of Government to further it. Efforts must be made to assure enlightened determination of where that interest lies, rather than to emasculate the organized force of the state by demanding a supine and unrealistic "impartiality."

It is not the reviewer's desire to quarrel with Dean Spencer on the merits of the Wagner Act. That particular statutory scheme is subject to numerous criticisms, many of them clearly stated by Dean Spencer. It is rather the purpose here to suggest that the approach of this monograph and the point of view of its author do not warrant describing the product as "the public point of view of the Labor Act."

WALTER GELLHORN.
Columbia University Law School.

Yale Law School: The Founders and the Founders' Collection, by Frederick C. Hicks. Yale Law Library Publications No. 1, June, 1935. Published for the Yale Law Library by the Yale University Press. Pp. 47.—This booklet, the first in a series to be published for the Yale Law Library, has also appeared as Pamphlet No. XXXIX of the Committee of Historical Publications, Tercentenary Commission of the State of Connecticut. The founders referred to in the title are the first three instructors in the private school out of which the Yale Law School grew and the collection indicated consists of their private law books which together made up the nucleus of what has now become the second largest law school library in the United States.

Interest in this booklet should by no means be confined to those who are primarily concerned with the growth of the Yale Law School, for in developing his theme Professor Hicks has not only contributed biographical sketches of Seth P. Staples, Samuel J. Hitchcock and David Daggett, the three instructors mentioned above, but he has incidentally indicated some of the conditions surrounding the practice of the law during the first half of the nineteenth century and he has necessarily contributed an interesting chapter to the early history of legal education in America. Considerable attention is also devoted to the law books which each of these men assembled, in part for their personal use, but primarily to assist them in their duties as instructors in the law.

While it is not surprising, it is no doubt unfortunate that this collection has had a rather precarious existence since 1846, when it became the property of the Yale Law School. As successive generations of students pored over their contents many of the books were worn out and discarded. For this and other reasons the original number of 2,260 volumes has dwindled to only 386 that can be definitely identified. Although their intrinsic value is not inconsiderable, since most of them were outstanding legal publications in their time, they are obviously treasured chiefly because of the historical associations that attach to them by virtue of their long and useful history.

Check List of American Laws, Charters and Constitutions of the 17th and 18th Centuries in the Huntington Library. Compiled by Willard O. Waters. Huntington Library Lists Number 1. The Trustees of the Huntington Library, San Marino, California. Pp. vii, 140.—In spite of its great preoccupation with the doctrine of precedent, the legal profession has been notoriously careless about the preservation of the earlier printed records of its diverse activities. To no class of legal materials does this statement more strongly apply than to statute law. In consequence there are in the entire United States very few libraries that can make claim to anything like complete collections, and many, if not most, of the colonial and early items must be characterized as rare books.

One must have these facts in mind to appreciate the value of this first number of the *Huntington Library Lists* recording its holdings of over 900 laws, charters and constitutions printed before the year 1801. Library materials are of little value until their existence is made known to those who may wish to examine them. While the busy lawyer in his daily round may have little occasion to refer to such early law books they form a vital part of the legal heritage of the nation. As such they are of genuine interest to specialists in legal history and constitutional law as well as to librarians. All of these should certainly know where such scarce and vital source materials may be examined. As there is without doubt a growing interest in legal history and in the development of law libraries this contribution seems most timely.

The items listed are conveniently arranged under several headings with the more general items appearing first, followed by the holdings for the several states, arranged in alphabetical order. Since, according to the announcement, this list is an experiment it may not be out of place to express the hope that it will be followed by others. Certainly it would be a service to the legal profession thus to make generally known other important legal resources of this great library. In compiling future lists the incorporation of two relatively slight improvements would greatly assist the user; first, a table of contents and, second, running titles at the tops of the pages indicating the heading under which the items on the particular page fall. In examining the present list one must usually thumb through many pages before finding the section of immediate interest.

WM. R. ROALFE.
Duke University Law School.

American Neutrality, 1914-1917, by Charles Seymour. 1935. Yale University Press.—How can the United States stay out of the next European war? That question, with which Professor Seymour opens the introduction to his lucid analysis of the neutrality problem, has troubled all thoughtful Americans of late and has met with a variety of answers ranging from suggestions that the United States should cooperate in the collective system for the prevention of war to the schemes of the Nye committee followers who would have us dive into the cyclone cellar of economic isolation in the event of conflict abroad. Underlying these proposals for future action lie different conceptions in regard to what led us into the last war; no current discussion of neutrality is complete without an argument over the forces which precipitated us into war in 1917. Into the morass of controversy and conflicting testimony Professor Seymour plunges boldly to emerge with one clear explanation of our entry on the side of the Allies, namely: the German unrestricted U-boat campaign.

The thesis of this volume is thus a simple one. Where writers like Walter Millis in his "The Road to War" discuss many factors like propaganda, commodity shipments, inept diplomacy, and undersea warfare without singling out any one as *the* one which induced us to become a belligerent, Professor Seymour brings the submarine issue into bold relief, contending that that factor and that alone caused President Wilson to ask for war against Germany. Economic and propaganda forces are not ignored, but they are definitely subsidiary. Most emphatic is the author in asserting that we did not "drift" into war. According to his line of argument the final authority for making a decision was President Wilson, who was not influenced by commercial or emotional pressures but who, outraged by German submarine tactics, had taken a positive stand after the sinking of the "Sussex" in 1916, asserting that unless Germany abandoned unrestricted submarine warfare the United States "would have no choice but to sever diplomatic relations." Thus, when the Imperial Government announced a resumption in 1917 of its former tactics, Wilson could only carry his threat into effect. Pro-

fessor Seymour goes to considerable pains to show that just prior to the break in February 1917 our relations with Germany had improved while those with the Allies had worsened; many Americans were annoyed by British blockade measures and an embargo on shipments to the Allies loomed as a distinct possibility. Then suddenly the U-boat entered the picture again, all was changed, and we embarked for war. One of the points which the writer drives home again and again is to the effect that whenever Wilson endeavored to force Britain to make amends for her transgressions of the rules, the submarine issue would pop up, and the President, to the relief of the British Foreign Office, would be distracted by negotiations with Berlin.

Professor Seymour builds up a marvelously convincing case to support his thesis. The reader cannot but be relieved to have a complex matter so simply solved. What joy to have a clear answer to *something* in these days of bewilderment! One is troubled, however, by this easy solution. It may well be that President Wilson was influenced only by the submarine, but would he have been able to pull the rest of the nation with him had there not been supplementary economic and propaganda forces at work? The author does consider these but he relegates them too far into the background. Submarines alone could not have roused us to war. Professor Seymour has performed a useful service in exploding some of the naive beliefs of the Nye supporters who see devilish bankers and munitions makers as the chief instigators, but in formulating an equally simple thesis of his own he too seems to miss the mark. And truth as usual must lie somewhat obscurely in the middle.

Though one may differ with Professor Seymour over the degree of emphasis to be placed upon the various factors, the book remains an exceedingly illuminating and useful study. Particularly arresting is the material on loan and commodity embargoes, and here Professor Seymour shows up the futility of such embargoes as are incorporated in the present neutrality bill. He demonstrates conclusively, using the famous Lansing letter of 1915 as part of the evidence, that an embargo on loans and commodities could not be maintained in the face of the internal pressures which would arise, that the lifting of the informal embargo on loans in 1915 had nothing to do with public opinion because the latter was already formulated, and that an embargo on supplies to the Allies would not have deterred the Germans from their submarine campaign because the German High Command was not primarily concerned with what England obtained from America but with what she imported from her own possessions and from other states throughout the world. This book should be required reading for all those who believe that embargoes are the key to a safe neutrality policy. To those who hold that propaganda dragged us into war, Professor Seymour declares that credit goes not to Allied skill but to the receptivity of the American mind. As he says on page 150, "It is not so much the seed as the soil that counts." It is too bad that Professor Seymour over-simplifies the issue in his turn, but his greatest contribution to current thought is his stressing the impossibility of staying out of war by planning for embargoes in advance of unforseen contingencies, and of achieving security by attempts at isolation.

PAYSON S. WILD, JR.

Cambridge, Massachusetts.

Ius gentium methodo scientifica pertractatum. By Christian Wolff. Vol. I: A Photographic Reproduction of the Edition of 1764, with an Introduction by Otfried Nippold; Vol. II: A Translation of the Text by Joseph H. Drake, with a Translation (by Francis J. Hemelt) of the Introduction by Otfried Nippold. No. 13 of The Classics of International Law. Oxford: The Clarendon Press; New York: Oxford University Press, 1934.—This is one of the well-known series edited by James Brown Scott and issued under the auspices of the Carnegie Endowment for International Peace. The number of titles now included in the series and the high standard of translation and editing make these volumes indispensable both for scholars interested in the study of diplomacy and for institutions in which courses are offered in the field of international relations. The importance of such courses need hardly be emphasized. A well-trained corps of diplomats is one of the needs of the country at present, and we cannot expect to have them until proper provision for their training is made in the colleges and universities. And that training must include more than a study of current international problems. It must cover the history of international relations also, and it is to this phase of the subject that this series makes its contribution.

The present volumes are of unusual interest. Christian Wolff was one of the outstanding figures of the eighteenth century. He had an unusually wide range of interest. International law was only one of many subjects to which he directed his attention. He started with theology but studied mathematics and physics also. To his mind these subjects fell within the field of philosophy. The latter he defined as "a science which comprises all human knowledge and understanding." His study of mathematics was concerned only with the method of mathematical reasoning. Observing that mathematicians were able to show undeniable proofs of the truth of their results, he thought that by studying their method he might be able, as he himself expresses it, "to bring theology to irrefutable certainty." That he should even have attempted to do this indicates to what extent he had the courage of his convictions. Most modern theologians, we may assume, would hardly favor such an attempt. His study of international relations, to which this *Ius gentium* we are reviewing constitutes the most significant contribution, is merely another part of the philosophy defined above.

Wolff's versatility surprised even his contemporaries, accustomed as they were to command of more than one field of study by a single scholar. One of his professors, on hearing of his plan to submit philosophy and theology to a method analogous to that of mathematics is said to have exclaimed: "*Rara avis theologus, physicus et mathematicus.*" Wolff indeed represents a type of scholar that no longer exists. In our time, with the progress made in all branches of knowledge and the vast amount of data accumulated in the different specialties, anyone who worked and published in as many subjects as Wolff would be under immediate suspicion of superficiality.

But in his days the conditions were different. A knowledge of several subjects was not yet regarded as beyond the range of one scholar. And Wolff was so successful in his work that he not only profoundly influenced the thought and civilization of the eighteenth century but he has shown the way to the proper under-

standing of some problems that are in the forefront of discussion today. I refer especially to his fight at Halle for academic freedom and unhampered search for truth. In his speeches and writings on this subject he anticipated with surprising precision the attitude of the most intelligent educators of the present time. Ours is supposed to be a progressive civilization, but judging from recent attempts to dictate to institutions the content and manner of teaching, little or no progress has been made in this matter in more than a hundred years.

Moreover, the *Ius gentium* has immediate bearing on the present trend of international relations. In Wolff's theory the different nations are members of a society of nations, just as individuals are members of a particular nation. This is his *ius naturale gentium*. He believes that just as it is incumbent on the individuals of a nation to improve their relations with one another, so the members of the society of nations should seek to make international relations better. This he calls the *ius voluntarium*. To him the society of nations is the *civitas maxima*, and it has sovereignty (*imperium universale sive gentium*). His theory of the *ius voluntarium* was bitterly attacked both in his own time and later. It was urged that what he was describing was not a *ius voluntarium* at all but a *ius necessarium*. Nor were his critics more tolerant of his theory of the *civitas maxima*. The sovereignty which Wolff assigned to it would, they contended, nullify the sovereignty of the individual states. The question is one of special interest today in view of the institution of the League of Nations.

Professor Drake's translation is accurate and scholarly. Possibly he has adhered too closely to the form of Wolff's Latin periods. The length of many of the sentences, with their faithful reproduction of all the phrases and subordinate clauses of the original, detracts somewhat from ease of reading. While this is good Latin style, the question may be raised whether it is good English style. There are, I know, two schools of translation. One of these holds that the sentence structure of the translation should follow that of the original. The other maintains that the sentence structure should conform to English standards, even if this involves the breaking up of a period into two or three sentences. On the whole, the latter seems to be the sounder view, for, after all, the purpose of a translation is to reproduce the content rather than the style of the original. The sentence structure should be as English as the words. But there is, as I have indicated, the other view, and Professor Drake's adherence to it does not in any way detract from the accuracy of his rendering.

Besides the Introduction by Nippold, translated by Hemelt, the edition is equipped with a list of *errata* in the edition of 1764, an index, and two portraits of Wolff. Of the portraits the one which forms the frontispiece of the text volume is from a photograph of the oil-painting in the University of Halle and is unusually fine.

GORDON J. LAING.
University of Chicago.

Leading Articles in Current Legal Periodicals

New York University Law Quarterly Review, March (New York City)—On Looking Into Mr. Beale's Conflict of Laws, by Frederick J. de Sloovère; Attachment of Choses in Action in New York, by Mark H. Johnson; Hybrid Securities: A Study of Securities Which Combine Characteristics of Both Stocks and Bonds, by J. W. Hansen.

University of Chicago Law Review, April (Chicago)—The Law of Arrest in Relation to Contemporary Social Problems, by Jerome Hall; Two Fundamentals for Federal Pleading Reform, by William L. Eagleton; The Anatomy of Notice, by Maurice H. Merrill; The Rôle of the Bar in Electing the Bench in Chicago, by Edward M. Martin.

Tennessee Law Review, April (Knoxville, Tenn.)—Past and Present Requirements for Admission to the Bar in Tennessee, by W. Raymond Blackard; Rights of Action of an Unborn Child, by Water H. Anderson; Recent Trends in the Prevention and Treatment of Rural Juvenile Delinquency, by William E. Cole and Hugh Price Crowe; Standards of Training for Lawyers and Teachers, by Dennis H. Cooke; Deputy Sheriff Enjoined from Rendering Legal Services; Why Business Men Should Serve on Juries, by William L. Ransom; Curbing Excess Publicity of Criminal Trials.

University of Pennsylvania Law Review, April (Philadelphia, Pa.)—On Absolutisms in Legal Thought, by Morris R. Cohen; Tort Jurisdiction in American Admiralty, by Gustavus H. Robinson.

Minnesota Law Review, April (Minneapolis, Minn.)—Some Constitutional Limitations on State Sales Tax, by Laurence M. Jones; Mistake and Statutes of Limitation, by John P. Dawson; Venue Under the Corporate Reorganizations Act, by Lyman Mark Tondel, Jr.

Kentucky Law Journal, March (Lexington, Ky.)—Alimony After a Decree of Divorce Rendered on Constructive Service, by Robert B. Harwood; Right of a State to Restrict Exportation of Natural Resources, by W. Lewis Roberts; The American Law Institute's Restatement of the Law of Contracts Annotated with Kentucky Decisions (Continued), by Roy Moreland; Housing Legislation in Kentucky, by Byron Pumphrey.

Michigan Law Review, March (Ann Arbor, Mich.)—The Corporate Entity as a Solvent of Legal Problems, by Elvin R. Latty; The Federal Spending Power and State Rights; A Commentary on United States v. Butler, by John W. Holmes; Congress and the Appellate Jurisdiction of the Supreme Court, by Ralph R. Martig.

Commercial Law Journal, April (Chicago)—The A.A.A. Decision, by G. C. Young; The Law of Preferences, by Matthew Brown; Problems Relating to Referees, by Reuben G. Hunt; May Stockholders Invoke the "Instrumentality" Rule? by Paul R. Kach; Jurisdiction of a Court of Bankruptcy, by Harry S. Gleick; Some Problems for an Integrated Bar, by James I. Ellmann.

Georgetown Law Journal, March (Washington, D. C.)—The Development of French and German Law, by Francis Deák and Max Rheinstein; State Taxation of Interstate Commerce, and Federal and State Taxation in Intergovernmental Relations—1932-1935, by Robert C. Brown; The Reformation of Writings for Mutual Mistake of Fact, by Wex S. Malone; Corporate Personality, by Clyde L. Colson.

Yale Law Journal, March (New Haven, Conn.)—Commerce, Production, and the Fiscal Powers of Congress: I, by J. A. C. Grant; Law in the Third Reich, by Karl Loewenstein; Judicial Review of Acts of Congress and the Need for Constitutional Reform, by Charles Grove Haines.

Missouri Law Review, January (Columbia, Mo.)—New Frazier-Lemke Act, by John Hanna; Unfair Trade

Competition, by Irvin H. Fathchild; The Liability of a Possessor of Land in Missouri to Persons Injured While on the Land, by Glenn Avann McCleary.

Rocky Mountain Law Review, February (Boulder, Col.)—Trends in Constitutional Law, by Joseph P. Pollard; The Growth and Development of American Law Schools, by James D. McGuire; The Remedy of Specific Performance in Colorado Contracts: Part II, by Terrell C. Drinkwater.

St. Louis Law Review, February (St. Louis, Mo.)—Constitutional Interpretation in a Transitional Period, by Isidor Loeb; The Power of Congress to Impose Excise Taxes Retroactively, by Abraham Lowenhaupt.

Journal of Criminal Law and Criminology Including the American Journal of Police Science, March (Chicago)—The Italian Surveillance Judge, by Elio D. Monachesi; The Prosecuting Attorney and Reform in Criminal Justice, by Newman F. Baker and Earl H. DeLong; Punishment by Analogy in National Socialist Penal Law, by Lawrence Preuss; Recent Changes in German Criminal Law, by Friedrich Honig; Vignettes of the Criminal Law, by Charles C. Arado; Prison Stagnation Since 1900, by Ray Mars Simpson; The Classification of Felons in a Mid-Western State Penitentiary, by Edgar W. Voelker; The Woman and the Underworld, by John Landesco; Cryptography in Criminal Investigations, by Don L. Kooken; Identification of Scissors by Traces Left on Paper, by Paul Chavigny.

United States Law Review, March (New York City)—Living Probate: Further Considerations, by Harry Kutscher; The History of a Title: A Conveyancer's Romance.

Southern California Law Review, March (Los Angeles)—De Facto Public Officers: The Validity of Their Acts and Their Rights to Compensation, by Joseph Jarrett; The 1935 Changes in the Code of Civil Procedure, by Stanley Howell and Theodore W. Russell; Taxation—Constitutional Law—Constitutionality of the California Use Tax Act, by Richard H. Forster.

Canadian Bar Review, March (Ottawa, Ont.)—Stoppage in Transitu in the Province of Quebec, by Walter S. Johnson; Liability of Third Persons for Breach of Trust, by Professor F. A. Sheppard; Legislation Concerning Collective Labour Agreements. (Part II), by Margaret Mackintosh.

Notre Dame Lawyer, March (South Bend, Ind)—Constitutionality of the Unemployment Compensation Features of the Federal Social Security Act, by William E. Brown and Harold W. Story; The American Law Institute's Restatement of the Law of Agency with Annotations to the Indiana Decisions; Lord Hardwicke and the Science of Trust Law, by Brendan F. Brown; Principles of the Law of Succession to Interstate Property, by W. D. Rollison.

Dickinson Law Review, March (Carlisle, Pa.)—The Liability of Municipal Corporations for Torts in Pennsylvania, by E. B. Schulz; Some Aspects of Judicial Discretion, by Frederick G. McKean; Is the Bar Overcrowded? by Lloyd K. Garrison.

Commissioners on Interstate Cooperation

(*Continued from page* 319)

curity Legislation. This agency would direct its attentions toward securing the passage, by the states, of model acts so that all states may participate in the provisions of the Federal Social Security Act.

Perhaps the most important general observation to be made from the deliberations of the Second General Assembly is the avowed willingness of its participants to go to their several legislatures and seek financial support for the extension of the work of the Council of State Governments and the several regional or national efforts it engages in.

Finally, in this brief period the several Commissions on Interstate Cooperation have established their importance as integral parts of the governmental machinery of these states. As other commissions are established to share the growing work of the Council of State Governments, even greater opportunities for usefulness will be open to these already active agencies of interstate harmony.

Arrangements for Annual Meeting at Boston August 24 to 28, inc., 1936

HEADQUARTERS: STATLER HOTEL

Hotel accommodations, all with bath, are available as follows:

	Single for one person	Double (Dble. bed for two persons)	Twin beds for two persons	Parlor Suites
	$	$	$	$
Statler	3.50 to 5.00	5.00 to 8.00		
Bellevue	3.00 to 5.00	4.50 to 7.00	5.00 to 7	12 to 20
Bradford	3.00 to 4.00	4.50 to 5.50	5.00 to 7	12
Brunswick	2.50 to 3.50	4.00 to 6.00	4.00 to 6	5 to 10
Copley Plaza	4.00 to 6.00	5.50 to 7.50	8.00 to 10	12 & up
Copley Square	3.00	4.50	4.50	6
Kenmore	3.50 to 4.00	5.00 to 5.50	5.00 to 7	8 to 12
Lenox	2.50 to 3.50	4.00 to 5.00	5.00 to 6	5 to 10
Lincolnshire	3.00 to 3.50	4.50 to 5.00	5.00 to 6	9 to 11
Manger	2.50 to 3.00	3.50 to 4.50	4.50 to 5	
Parker House	3.00 to 5.00	4.50 to 6.00	6.00 to 8	10 to 12
Puritan	3.00 to 5.00	4.50 to 6.00	5.00 to 6	5 to 10
Ritz-Carlton	5.00 to 10.00	6.50 to 10.00	8.00 to 10	12 to 20
Sheraton	3.50 to 5.00	4.00 to 5.00	5.00 to 7	7 to 10
Somerset	3.00 to 5.00	5.00 to 6.00	5.00 to 8	10 to 12
Touraine	3.00 to 5.00	4.50 to 6.00	5.00 to 6	10
Vendome	3.00 to 4.00	4.50 to 5.50	6.00 to 7	8 & 9
Westminster	2.50 to 3.50	4.00 to 5.00	5.00 to 6	8 to 10

Explanation of Type of Rooms

A single room contains either a single or double bed to be occupied by *one person*. A double room contains a double bed to be occupied by *two* persons.

A twin-bed room contains two beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating hotel desired, number of rooms required and rate therefor, names of persons who will occupy the same, and arrival date, including definite information as to whether such arrival will be in the morning or evening.

Requests for reservations should be addressed to the Executive Secretary, 1140 North Dearborn Street, Chicago, Ill.

Current Events

(*Continued from page 299*)

government at all that could not give help in such trouble."

Instead of continuing to procede in this manner, however, the statute, the court says, attempts to solve the problem in another way, that is, by an insurance scheme. The public will pay the bill, the court states, no matter which plan is in effect. Without saying what are the true causes of business depressions, panics and unemployment, the legislature may validly attempt to remedy matters to some degree in the future by raising a fund through taxation of employers generally.

There is no unequal protection of the law or unfair classification, the court says. "The peril to the State arises from unemployment generally, not from any particular class of workers. So likewise, employers generally are not so unrelated to the unemployment problem as to make a moderate tax upon their payrolls unreasonable or arbitrary. As stated before, unemployment and business conditions generally are to a large extent linked together."

Calling attention to previous New York laws which have been sustained because of "emergencies," the court says:

"The Legisltaure seems to meet the future now without waiting for the emergency to arise. Can it do so? Unless there is something radically wrong . . . courts should not interfere with these attempts in the exercise of the reserve power of the state to meet dangers which threaten the entire commonweal and affect every home. No large body of men can be without work and the body politic be healthy. . . ."

"Whether we consider such legislation as we have here a tax measure or an exercise of the police power seems to me to be immaterial. Power in the State must exist to meet such situations, and it can only be met by raising funds to tide over the unemployment period. Money must be obtained and it does not seem at all arbitrary to confine the tax to a business and unemployment out ot which the difficulty principally arises.

"It is said that this is taxation for the benefit of a special class, not the public at large, and thus the purpose is essentially private. The Legislature, after investigating, has found the facts to be that those who are to receive benefits under the act are the ones most likely to be out of employment in times of depression.

"The courts cannot investigate these facts and should not attempt to do so. . .

"Experience may show this to be a mistake. No law can act with certainty; it measures reasonable probabilities. . .

"Fault is also found, perhaps with some justification, with the benefit allowed, after a period of ten weeks' idleness, to those who have been discharged or left because of strikes. Here again the Legislature may exercise its judgment, and a full scheme or plan cannot be condemned because the courts may not approve of certain details.

"So too, the right to refuse other work of a certain kind when offered has come in for criticism. There may be a diversity of views as to the wisdom of these provisions, but again, these are not matters for the courts to consider unless they become so extreme as to become arbitrary.

"Whether or not the Legislature should pass such a law or whether it will afford the remedy or the relief predicted for it, is a matter for fair argument, but not for argument in a court of law. Here we are dealing simply with the power of the Legislature to meet a growing danger and peril to a large number of our fellow citizens, and we can find nothing in the act itself which is so arbitrary or unreasonable as to show that it deprives any employer of his property without due process of law or denies to him the equal protection of the laws."

Death of James M. Beck Ends Useful Career

JAMES M. BECK died suddenly at his home in Washington on April 12 of coronary thrombosis. He would have been seventy-five years old in July, but his death came as a shock to the capital, because of his intense activity in legal and political affairs during the present year. His arguments before the Supreme Court in two cases this year (The TVA Case and The Securities Act Case) have attracted nation-wide attention.

Much of Mr. Beck's life was devoted to public service. He was made an Assistant Federal Attorney for the Eastern District of Pennsylvania in 1888. In 1896 he became United States Attorney in Philadelphia, and 1900 he received an appointment as an Assistant Attorney-General in Washington. In 1920 President Harding made him Solicitor-General, and from 1927 to 1934 he was a member of the House of Representatives from Pennsylvania. These periods of office-holding were interspersed with years of practice in Philadelphia, New York City and Washington. He acquired the reputation of being one of the most eminent constitutional lawyers in the land, and much of his last years was devoted to a defense of his conception of that document. His published books were principally on constitutional questions.

While Solicitor-General of the United States Mr. Beck supervised the argument of more than eight hundred cases in the Supreme Court, and personally appeared in more than one hundred. He successfully established the application of the Sherman Anti-Trust Law to a nation-wide boycott of a manufacturer's product, in the Danbury Hatters Case, arguing that the "commerce power" of the Federal government was a sufficient basis on which to found the action taken against labor unions. He also argued for the Government in the Lottery Case, which established the power of the federal government to prevent interstate commerce in certain instances. He successfully defended attacks on the constitutionality of the Stockyards Act, and represented federal interests in Massachusetts v. Mellon and Frothingham v. Mellon.

Mr. Beck was particularly outspoken against recent legislation which he felt transgressed the constitution. Speaking under the auspices of various groups he deplored tendencies toward centralization of government, and the building up of bureaus and commissions to pass upon personal and property rights. He felt that unless these tendencies were stopped the country was doomed. His recent Supreme Court cases were all against instrumentalities which he felt were vicious.

According to the New York Times, Mr. Beck's life was that of a partisan. He felt strongly on any subject that engaged his attention. Originally a Democrat he broke with Bryan because of his monetary theories. Before the entrance of the United States into the World War he made many speeches advocating that course. He was a bitter opponent of the Prohibition Amendment, which he claimed should not be a part of the Constitution.

Mr. Beck was a candidate for the presidency of the American Bar Association last year. He held many honors at home and abroad, was a Bencher of Gray's Inn, London and an officer of the French Legion of Honor.

Washington Letter

April 20, 1936

Property in News

MAY a broadcasting company, without permission, use news, after its publication, which has been assembled by a news gathering and selling agency? The Supreme Court has been asked to decide this question in KVOS, Inc. v. The Associated Press. The case comes for review from the Ninth Circuit where the granting of a preliminary injunction was sustained. The District Court's opinion (Western District of Washington, Northern Division) rendered December 18, 1934 is reported at 9 F. Supp. 279; and that of the Circuit Court, December 16, 1935, at 80 F. (2d) 575.

A German decision is cited by the broadcasting company, which it alleges is squarely in point, wherein a newspaper had "borrowed" some of its news from a broadcasting company and relief was denied by the courts. Whether this inverted German order—the situations of the parties being reversed but the principle being the same can be translated into good American law remains to be determined.

Action on the Ritter Impeachment Charges

After ten days of trial and deliberation, on April 17, 1936 eighty-four members of the Senate voted by exactly two-thirds, 56 to 28, that Halsted L. Ritter, United States District Judge for the Southern District of Florida, was guilty of having brought his court into "scandal and disrepute" by certain acts of "misbehavior." This was Article VII of the impeachment charges brought against him. He had been found not guilty on the first six articles.

The substance of the charges in these other articles was: Article I, that he granted an excessive attorney fee, $75,000, to his former law partner, A. L. Rankin, in the Whitehall Hotel receivership case and thereafter corruptly accepted $4,500 from Rankin; Article II, that he connived with Rankin and others in bringing the Whitehall litigation and then dissipated the assets; Article III, that after becoming a judge he practiced law for the Mulford Realty Corporation, receiving a $2,000 fee; Article IV, that, being a judge, he engaged in the practice of law in respect to several matters for J. R. Francis for which services he received from the client the sum of $7,500; Article V, that he attempted to evade and defeat the payment of income tax for 1929 on some $12,000 received, in addition to his salary as judge; and Article VI, that he attempted to evade payment of income tax for 1930 on $5,300 received in addition to his salary.

"Federal Register" Furnishes Needed Information

THE United States now has what amounts to an official newspaper since the recent appearance of the Federal Register which publishes daily such presidential proclamations, administrative orders, rules and the like as have public application. Following the same general form as the Congressional Record, it is printed by the Government Printing Office in Washington. Provision for this publication was made in a bill passed in 1935, but no appropriation was made at that time due to a filibuster in the closing hours of the session.

The act which brought the Federal Register into being provided for the publication, in addition to all presidential proclamations and executive orders of general applicability, of such documents as may be required to be published by act of Congress, and such documents as shall be authorized to be published by regulations prescribed by the Administrative Committee of the Division of the Public Register and approved by the President. The Administrative Committee is composed of the Archivist, a representative of the Department of Justice, and the Public Printer. The Director of the Federal Register acts as secretary for this committee.

The Act defines "document" to mean any presidential proclamation or executive order, or any order, regulation, rule, certificate, license, notice, or similar instrument, issued, prescribed or promulgated by a Federal agency. All such documents are required to be filed and published and are not valid until they have been filed and published.

The need for such a publication has been recognized for some time, especially during recent years. The 1934 report of the American Bar Association's Special Committee on Administrative Law stressed the necessity for the making of administrative orders centrally available and of some sort of notice before going into effect. In the so-called "Hot-Oil" Case Chief Justice Hughes remarked that there was need for a central compilation of executive orders. The thought has been expressed in some quarters that these two incidents were responsible in large part for the establishment of the new publication.

Telegram Seizure Cases

The case of the law firm of Mr. Silas H. Strawn, of Chicago, is still "rocking along" on the temporary injunction obtained in the Supreme Court of the District of Columbia against divulgence of its telegrams by the Western Union Telegraph Company. Some time ago it was expected that the matter of making the injunction permanent would be brought to an early hearing. Up to the present, no statement has been filed with the court, either by the defendant or by the Senate committee, appearing as amicus curiae, as to whether additional defenses will be interposed. The matter is not now set for hearing, and it is not apparent when it may be so set.

In the case of publisher Hearst, the Supreme Court of the District, upon final hearing, refused to grant the temporary injunction requested against obtaining and divulging of telegrams by the Senate lobby investigating committee and the Federal Communications Commission. Chief Justice Wheat ruled that he had no right thus to coerce a coordinate branch of the Government, and that he did not consider that the question of freedom of the press was involved in the case. Although asserting that he would have a right to enjoin the Communications Commission, the Court ruled that the matter was then moot because of affidavits filed stating that the Commission intended to make no further search of the telegraph company files. Therefore the application was denied as to the Commission "without prejudice to its renewal if there are any further activities of the nature of those complained against." Mr. Hearst is appealing from this Court's decision.

After an extensive and heated discussion, the House of Representatives, by a vote of 153 to 137, declined to pass the bill whereby the Senate had sought to allow a $10,000 attorney fee to a former law partner of the Senate lobby committee's chairman for services in defending actions brought against the committee. Whether this item will be put through later, perhaps as a rider to one of the necessary appropriation bills, is a subject of some local speculation.

Minimum Wage to be Reconsidered

The United States Supreme Court has consented to review a case which may result in a redetermination of the validity of enactments providing minimum wages for women.

This is the case of Morehead v. Tipaldo, wherein the Court of Appeals of New York held invalid a State statute, basing its ruling squarely upon the Supreme Court's decision of Adkins, et al., v. Children's Hospital, 261 U. S. 525, decided April 9, 1923.

Letters of Interest

A Correction

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

Referring to my article in your March issue on, "The Influence of the 'Berkshire Constitutionalists'—"I am mortified to find that there is an error in the first footnote at the beginning of the article on page 168. In that footnote, I stated that I had found no reference to the Berkshire story in a number of books including Charles Warren's "Congress, The Constitution and the Supreme Court." I should not have referred thus to Mr. Warren's book because there is a brief, but effective, reference to the story (on pages 87-88 of both editions) in the course of a very interesting chapter entitled, "The Bill of Rights and the Court,"—the reading of which I strongly recommend to every one interested in the subject.

I hope that you may be able to print this correction in your next issue.

Yours very truly,

FRANK W. GRINNELL.

Boston, April 7, 1936.

Liability for Radio Defamation: The Victim's Side

Editor AMERICAN BAR ASSOCIATION JOURNAL:

This letter is submitted in reply to an adddress by Mr. A. L. Ashby, Vice-President and General Attorney for N. B. C., which appeared at p. 159 of the March, 1936 number of the American Bar Association Journal. A much more complete dicussion, with citation of all then available materials, is given in 19 Minnesota Law Review 611-660 (1935).

Under the law of defamation broadcasting stations, like all other publishers, are subject to strict liability for the publication of unprivileged defamatory utterances. So the courts have held without exception. Due care on the publisher's part, under the law of defamation, is no defense. The broadcaster, as well as the speaker given access to the microphone, is a publisher. Broadcasting is not a purely automatic reaction to the speaker's words uttered into the microphone. The continuing operations of the broadcaster as the speech proceeds, notably in the matter of modulation readjustment, as well as the voice of the speaker uttered into the microphone, are necessary to make the rendition satisfactorily and continuously audible to radio listeners. The decisions of the courts on this matter are therefore well supported in reason as well as authority.

The suggestion has often been made in argument, however, that this rule is unfair to broadcasters in that they are held liable at their peril although the speaker at the microphone might without warning have deviated from his manuscript. Another instance where it is claimed that the rule is unfair to broadcasters is in the case of political speeches, where by the Federal Statute the broadcaster is not permitted to exercise censorship of the utterances.

The assertion that unfairness or injustice to broadcasting stations is involved in these cases apparently rests upon a double misconception. It is a misconception of fact, in the first place, that broadcasting is purely automatic, and that the broadcaster's only part therein is to permit the speaker to use the electrically charged apparatus. It is a misconception of law, in the second place, that liability here should depend on fault. That is the rule in the law of negligence. In the law of defamation, however, strict liability for damage done irrespective of fault is the rule. Essentially, therefore, the underlying argument is that in the interest of "justice" the law of negligence should here be substituted for the law of defamation.

This view of "justice," however, overlooks the innocent victim of the broadcaster's defamation, and seeks to look at the broadcaster alone. The danger to innocent victims has been many times multiplied by radio broadcasting. Greater difficulties of program control than in control of newspaper copy, if actually involved, far from going to relieve the active broadcaster from the usual liability, rather requires even more strict application of the law of defamation in order to accomplish the needful greater protection to passive innocent victims.

The needful protection for innocent and careful broadcasters can readily be provided, moreover, at the expense of the parties who furnish the defamatory language and for whom the broadcast is made. The radio station can require of outside speakers, candidates or others, that they furnish indemnity or insurance to cover risks of liability involved in such broadcasts. It is by no means necessary as a practical matter for the broadcaster's protection to throw the

burden of unprivileged defamatory broadcasts on the helpless public of innocent victims.

LAWRENCE VOLD,
Professor of Law, University of Nebraska

Enforcement of Judgments

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

In your April issue there appeared an article entitled "Modernize the Process for enforcement of judgments," by Cyrus W. Lunn, a member of the New Jersey and New York bars. I am surprised that Mr. Lunn made no reference to the new supplementary proceedings law enacted in New York in 1935, known as Article 45 of the civil practice act and comprising 38 sections.

Attorneys for judgment creditors, in New York, went through all of the experiences described by Mr. Lunn, and many more. The new supplementary proceedings law was prepared under the auspices of the Brooklyn Bar Association of which Mr. Julius Applebaum was chairman, and of the Committee on the Supreme Court of the New York County Lawyers Association. We had the full cooperation of the Judicial Council, which sponsored the measure. The act may well serve as a model for a uniform law on the subject. If Mr. Lunn can discover anything that will further improve the law, I would be glad to hear about it.

ISIDOR WELS,
Chairman, Committee on the Supreme Court of the New York County Lawyers Association
New York, April 13.

Editor, AMERICAN BAR ASSOCIATION JOURNAL:

In glancing through the April Journal I became interested in an article by Mr. C. W. Lunn, entitled, "Modernize the Process for Enforcement of Judgments."

While it would be inappropriate to do more than add a word of approval to his thought that too little attention is paid to the judgment after it is rendered, and too few efforts are put forth to collect, I think it not inappropriate to suggest the interest of the people in the millions of dollars of fines that are assessed in the courts which are never collected. The distressing part is that no effort is made to collect.

We are quite active for the debtor, but rather indolent so far as the creditor is concerned.

Exact justice means the relief of the honest debtor and a continuous pressing of the dishonest one. Whether this pressing should take the form of contempt proceedings or some other method of exposure and scrutiny may be determined by those who write the laws.

Earnestly yours,
WILLIAM H. ATWELL,
Judge, U. S. District Court.
Wichita Falls, Tex., April 6.

Harvard Class of 1916 to Have Reunion at Boston

EDITOR, AMERICAN BAR ASSOCIATION JOURNAL:

If you feel it worth while to mention in one of the coming issues of the "Journal," I might inform you that the Class of 1916 of Harvard Law School is arranging for a reunion, its twentieth anniversary reunion, in conjunction with the meeting of the American Bar Association in Boston during the week commencing August 24, 1936. This will also be on the eve of the tricentennial anniversary of the founding of Harvard College. Spencer B. Montgomery, of the firm of Powers and Hall, 30 Federal Street, Boston, Mass., is Chairman of the Reunion Committee, on which are the following Boston lawyers: Richard C. Evarts, Eugene T. Connolly, Oscar W. Haussermann, Francis S. Moulton and Daniel Needham.

Among some of the members of this class are Honorable Paul V. McNutt,

Governor of the State of Indiana; Adolph A. Berle, Jr., Chamberlain of the City of New York and former member of Roosevelt's so-called Brain Trust; William Hodson, Director of Public Welfare of New York City; and William C. Bullitt, United States Ambassador to the Russian Soviet at Moscow.

J. ANDREW FRANTZ,
Secretary of the Class of 1916
of Harvard Law School
Lancaster, Pa.

"Smart as a Philadelphia Lawyer"

Editor, American Bar Association Journal:

In the very interesting article of Mr. Donald F. Bond in the November number, "The Law and Lawyers in English Proverbs," at page 726 he refers to the proverbial expression, "it would puzzle a Philadelphia lawyer." He suggests that the saying arose in New England, and in the footnotes the earliest date cited for the expression is 1803. In view of the interest of this famous expression, you would perhaps be willing to print the enclosed passage, showing that the expression originated in the middle of the 1700s, and was first current in New York and in England, rather than in New England. The letter was written to myself by the learned Mr. Luther E. Hewitt, Librarian of the Philadelphia Bar Association, on December 28, 1931.

JOHN H. WIGMORE
Northwestern University, Dec. 13.

Philadelphia, December 28, 1931.

"With reference to the expression, 'would puzzle a Philadelphia lawyer.' The late Thomas Leaming, Esq., in his interesting book, 'A Philadelphia Lawyer in the London Courts,' alludes to the expression at page 16. It appears from Mr. Leaming's book and otherwise that the expression became proverbial both in this country and in England due to the reputation of Andrew Hamilton, Esq., of Philadelphia, by reason of his vindicating the liberty of the press in the celebrated trial wherein Peter Zenger was prosecuted for criticizing in his newspaper the acts of the Governor of the Colony of New York and his party. Hamilton secured an acquittal and the result of the case attracted wide and deep attention on both sides of the Atlantic, so that Mr. Leaming says that the case was responsible for the phrase, 'still proverbial on both sides of the Atlantic "that is a case for a Philadelphia lawyer'." It is unnecessary for me to dwell on the Zenger case because you know that case well as one of the celebrated cases in legal history.

"In an interesting address in Philadelphia at a banquet of the American Bar Association in 1924, the then Chief Justice Von Moschzisker of the Pennsylvania Supreme Court dealt with the origin of the phrase. His remarks are given in Volume 10, American Bar Association Journal, beginning at page 857. He refers to the late Hon. Hampton L. Carson, who said that the phrase first came to be used in 1735, after the Philadelphia lawyer had successfully appeared for John Peter Zenger. Chief Justice Von Moschzisker's remarks are well worth re-reading.

"The fame of Andrew Hamilton had already been established in England by his conduct on behalf of the Penns in the famous case of Pennsylvania vs. Lord Baltimore in the 1720's. That the expression was proverbial in England as well as in this country is apparent from a paragraph in Reminiscences of Judge Penrose upon the occasion of the Law Association of Philadelphia centennial. . . . A copy of our centennial volume was mailed to you last week for your private library."

(Signed) LUTHER E. HEWITT

News of the Bar Associations

Florida Association Holds Meeting in Havana

THE Florida State Bar Association held its annual meeting this year in Havana, Cuba, on April 2, 3 and 4, following a one day session of the Conference of Delegates in Miami on April 1st.

The Conference of Delegates devoted its time to the study of the proposed new code of criminal procedure. The matter was carried over until the mid-year meeting.

Addresses were made at the convention proper in Havana by William L. Ransom, President of the American Bar Association; Harvey Harrison, of Little Rock, Arkansas, and Dr. Luis Machado, a prominent Cuban lawyer and chairman of the convention committee. Dr. Andes Domingo Morales del Castila, secretary of the Department of Justice for Cuba, delivered an address of welcome in Spanish which was translated into English by Mr. Luis J. Batanfall. The welcome on the part of the Havana Bar was given by Dr. Eduardo Bekencourt, Dean of the Havana Bar, and a response was made by Martin Caraballo, both in English and Spanish.

Various reports of standing committees were received and ordered printed for the information of the Bar. The report of the Committee on Police and Prosecution calling for trained investigators and a bureau of statistics and information was adopted.

Lewis Twyman, of Miami, was elected President of the Association and Ed R. Bentley re-elected as Secretary-Treasurer. Martin Caraballo, Tampa, W. J. Oven, Tallahassee, and Judge Millard Smith, Titusville, were elected to the Executive Committee.

Following is a brief biographical sketch of the new President:

Lewis Twyman was born in Botetourt County, Virginia, on September 6, 1889. He graduated from high school, preparatory school, academic school and law school, and holds an A. B. and an LL. B. degree from Washington & Lee University at Lexington, Virginia. He was admitted to the Bar of the State of Virginia in 1915 and the Bar of Florida in 1917 and has practiced at Miami, Florida, continuously since that date. He has never been elected to or defeated for public office of any kind. He has been a member of the Dade County Bar Association, Florida State Bar Association and the American Bar Association for many years. He was President of the Dade County Bar Association in 1933, and for the past two years has been Chairman of the Grievance Committee of that association. He is now Chairman of the Committee of the Florida State Bar Association on Legal Education and Admissions to the Bar, and in fact has served on that committee either as chairman or a member thereon continuously for six or seven years. He served as a member of the Board of Law Examiners of the State of Florida for approximately two years.

Reflex Studio of Burdines

LEWIS TWYMAN
President, Florida Association

Florida Junior Section Also Holds Meeting

The Junior Bar Section of the Florida State Bar Association has just concluded its second annual meeting, held at the Hotel National, Havana, Cuba, April 3rd, 1936. At the general session of the State Bar Association on that morning the Chairman of the Junior Bar Section Committee on Bar Integration, John Dickinson of St. Petersburg, presented the report of his committee, which met with general approval, indicating the study and research devoted to this question by the younger members of the association. The President of the State Bar Association also announced that through the efforts of the Junior Bar Section during the year there had been a large increase in the membership of the association itself, the largest increase that had ever been had in any one year.

By motion duly made and carried the association went on record strongly endorsing the work of the Junior Bar Section and gave it a standing vote of thanks and appreciation for its fine work during the year.

Following the general session, the Junior Bar Section withdrew for its own meeting. The retiring President, A. Pickens Coles of Tampa, reported on the work done during the past year and pointed out that the Executive Council had had four meetings since the organization at St. Augustine—at Tampa, Gainesville, Lakeland and Havana. He was given a vote of thanks for his leadership during the first year of the Section.

Harold B. Wahl, who was the Section's official delegate to the Junior Bar Conference meeting in Los Angeles last July, reported on that meeting. Reports were had from the Committee on Unauthorized Practice, James M. Smith, Jr., Ocala, Chairman, and the Membership Committee, Edwin M. Clarke, Jacksonville, Chairman.

There was a general discussion as to plans for the coming year, and it was agreed that the Section would again concentrate its efforts on membership and the question of bar integration and unification.

The Junior Bar Section of the Florida Bar Association was organized at the 1935 annual meeting of the Association, held at the Ponce de Leon Hotel in St. Augustine, Florida, in February,

1935. Hon. William L. Ransom of New York City, now President of the American Bar Association, William A. Roberts of Washington, D. C., Secretary of the Junior Bar Conference, and Justice Fred H. Davis of the Supreme Court of Florida, were the speakers at the organization meeting. The Florida Section was the first official Section to be organized in any State Bar Association.

John Dickinson of St. Petersburg and Harold B. Wahl of Jacksonville were unanimously elected as President and Secretary-Treasurer, respectively. The following were elected as members of the Executive Council: W. G. Troxler, Miami, James M. Smith, Jr., Ocala, Hugh L. McArthur, Tampa, Dan Kelly, Fernandina, Edwin M. Clarke, Jacksonville, and A. P. Coles, ex officio as retiring President.

Massachusetts Association's Twenty-Sixth Annual Meeting

THE twenty-sixth annual meeting of the Massachusetts Bar Association was held on March 26th, 1936, at the rooms of the Boston Bar Association in the Parker House, Boston.

The reports of various committees were read and considered and a general discussion followed of some of the recommendations in the eleventh annual Report of the Massachusetts Judicial Council and of various other measures pending before the legislature relative to practice and procedure.

The following officers were elected: President, Henry R. Mayo, of Lynn; Vice-President, Frederick Lawton, of Boston; Treasurer, Horace E. Allen, of Springfield; Secretary Frank W. Grinnell, of Boston; Members at large of the Executive Committee: Morris R. Brownell, of New Bedford; James A. Crotty, of Worcester; Sybil H. Holmes, of Brookline; P. Joseph McManus, of Arlington; Harris M. Richmond, of Winchester; Philip Rubenstein, of Boston; Romney Spring, of Boston; Richard B. Walsh, of Lowell.

After the meeting, members were invited to attend the annual Bench and Bar dinner of the Boston Bar Association, which took place that evening and at which Hon. James M. Beck was the principal speaker,—his subject being, "The Supreme Court—Today and Tomorrow."

F. W. GRINNELL,
Secretary.

Junior Bar Section of N. J. State Association Holds First Annual Meeting

THE first annual meeting of the Junior Bar Section of the New Jersey State Bar Association was held at Newark, New Jersey on January 31st, 1936. A large gathering of young lawyers from various parts of the State of New Jersey attended the meeting at the Essex House (formerly Elks' Club). A most interesting program was presented.

Mr. Joseph Harrison, Chairman of the Section presided over the meeting. Reports were received from the Chairmen of various committees. The principal address of the meeting was given by Hon. John Kirkland Clark, President of the New York State Board of Law Examiners, Council Member and former Chairman of the American Bar Association Section on Legal Education.

HENRY R. MAYO
President, Massachusetts Bar Association

At the invitation of Mr. Harrison a number of men interested in the Junior Bar movement in New York attended the meeting, including Curtis C. Shears, former councilman from the Second Circuit and present Assistant Secretary of the A. B. A., Edward Gluck, member of the original organization committee of the Junior Bar Conference of the A. B. A. and Chairman of the Junior Bar Conference Committee of the New York County Lawyers Association, Hyman W. Gamso, connected with the New York Law Journal and also member of such Committee, G. Hunter Merritt, Caleb Harding, Ben Diamond and Henry Portnow.

Mr. Shears addressed the meeting briefly on the subject of the reorganization of the bar, and Mr. Gluck spoke on the origin and development of the Junior Bar Conference movement. The occasion presented an opportunity for developing mutual acquaintanceship among members of the bars of the States of New York and New Jersey.

EDWARD GLUCK.
February 4th, 1936.

"THE Junior Bar Conference is a Section of the American Bar Association, and the only national organization created by, run by, and composed of lawyers under 36 years of age." This sentence introduces a booklet recently issued which sets out in detail the nature, the organization, the history, the purposes, the activities and the advantages of membership in this body representing the younger members of the Bar. The booklet shows rather conclusively that there has been a movement in professional organization during the past five years that has already developed a wide following and an interest in professional activities that challenges older members of the Bar. It is available at the headquarters of the Association.